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TRANSCRIPT

SUPREME

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MARQUETTE

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INTERIOR

ON WRITS

PETITION

INDEX TO VOLUME 4.

Pages 1945 to 2762.

TRANSCRIPT OF TESTIMONY.

PAGE

Objections to Exhibits.....2059, 2066, 2292

Objections of Marquette to certain Exhibits.....2464

Offer of Exhibits.....2237

WITNESSES FOR THE COMMISSION (CONTINUED).

Testimony of:

Apgar, C. N.....2759

Ashley, Alex McClure.....2262

Browder, D. S.....2747

Campbell, W. W.....2028

Eaves, Elsie.....2735

Eysmans, J. L.....2041

Gottschalk, Jacob.....2049, 2064

Harkness, W. E.....2125

Harman, Harry E., Jr.....2081

Hayghe, W. E.....2111

MacIntyre, Everette..2027, 2056, 2555, 2588, 2605, 2609

McNair, J. E.....2142

Mahon, R. J.....2739

Neylan, John F.....2485, 2557, 2711

Parsons, F. C.....2157

Powers, Joseph W.....2291

Reiter, George H.....1945

Tackett, A. H.....2261

Twamley, James J.....2684, 2725

White, Hugh E.....2233

Testimony of Witnesses contained in pages 4315 to 7050 of the Original Transcript.)

4315 Washington, D. C.,
Wednesday, March 16, 1938.

4316 Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday the hearing is now reconvened at 10 o'clock a. m. in the Main Hearing Room of the Federal Trade Commission Offices.

The appearances for counsel are the same.

Gentlemen, I read these exhibits carefully, and I am of the opinion that 1022-B to I should be received in evidence and the objection should be overruled.

I have read this long letter here to General Manager George Reiter, from Mr. Thomas J. McFadden, and I do not think that it is a privileged communication. It shows on its face that it is a report of a meeting where others were present, and it does not give any confidential communications from the client to the attorney, and there are various other reasons and there is no use to go into them at this time.

(COM. EX. 1022-B to I was offered and received in evidence.)

(COM. EX. 1022-J to M was offered and received in evidence.)

4317 Examiner Norwood: This Mr. E. J. Mehren is connected up in several of these communications here in a way that I think renders them admissible.

GEORGE H. REITER thereupon resumed the stand as a witness for the Commission and testified further as follows:

Direct Examination by Mr. Wooden (Resumed).

Q. Mr. Reiter, is Mr. Mehren, E. J. Mehren, connected with any cement company in the industry that you know of?

A. No, sir.

Q. Before you had the conference with the Captain Collins of the Procurement Division, following this circular of July 10, 1935, I believe the conference to be held on the 12th, did you have a preliminary conference with the representatives of the Retailers' Associations named in that circular, Mr. MacQueen and Mr. Carnahan, I believe?

A. I think we did.

Q. Was that conference for the purpose of shaping or planning the sort of statement or presentation that would be made in the conference with Captain Collins?

4318 A. So far as I remember, these dealers' representatives, having been present at two previous meetings that none of us had attended, I was interested in finding out what happened at these other meetings, or what the meetings had meant so far as they were concerned.

At this meeting they also explained to us their stand, believing that this cement sold for emergency relief projects should be sold through the dealers, and stated, as they did later before Captain Collins, that if this class of construction work which had previously been in their field was taken away from them that it was a very serious matter to their industry. That was the substance of the conversation we had before the meeting with Captain Collins.

4319 Q. When you say "within their fields" you mean territorially or geographically as to being with the confines or portions of the cities and towns?

A. Not exactly, Mr. Wooden. I mean that this Federal relief money was being spent for the construction of work which in the past had been normally sold by dealers.

Q. And had normally been constructed by private parties?

A. Yes, sir.

Q. I believe you agreed yesterday that the injection of the Federal relief emergency appropriations, and this purchase of cement direct by the government, injected a new element into the situation.

A. That is right.

Mr. Leisure: I am not clear what the new element is. I was not clear yesterday and if there is any secret about it, I think it should be brought out.

By Mr. Wooden:

Q. The new element was that the dealers, by reason of the depression, were not selling the normal amount or the usual amount of cement and the government stepped in to encourage construction, with the expectation, as in the past, of buying direct?

A. I cannot follow that.

Q. All right, state it yourself.

A. The government, through this large appropriation—this $4,800,000,000 which was to be spent at the Presi-
4320 dent's direction—was trying to encourage all business, and apparently through the usual avenues of trade, and this money was going to be spent, as you mentioned previously, on work that had, in the past, been done with private or local money and the dealers rather expected that the government would lump all of these purchases together and purchase at central warehouses contrary to the way the cement had been purchased for such projects before.

Q. But if the division of trade which was set forth in the N. R. A. Code had been followed strictly, the government would have bought this direct from the mills rather than from the dealers?

A. Yes, in that all purchases directly by the government would have been sold direct by the cement manufacturers to the government.

Q. This proposal that came up again in July, 1935, in substance, was the same as that which had been suggested in June 1934, in the form of a new Article 11, as shown by Exhibit 1021-A, B, etcetera.

A. So far as sales to the United States Government are concerned, Mr. Wooden, yes.

Mr. Wooden: That is what I mean. Your Honor,
4321 at this time I desire to offer exhibits previously identified under the numbers of 202-E, F, G, and H. They are photographic copies of circulars of the Institute dated July 15 and August 14, 1935.

Mr. Leisure: No objection.

(COM. EX. 202-E to H was offered and received in evidence.)

Q. Referring to Exhibit 202-E and F, would you say the outline of the statements made to the Procurement Division, Captain Collins, was substantially the same as that covered by the proposed revision of Article 11, submitted in June, 1934?

A. As I have said before, this discussion was based upon a sales policy of a single company, which was there on exhibit, and these direct purchases—

Q. (Interposing) Which company was that?

A. The Lone Star.

Q. And when you say "these" you mean what?

A. In Exhibit 202-F—and, in general, I should say that the direct purchases indicated by the Lone Star Company were the same as those set out in this exhibit 1021-B, C, etcetera.

4322 Q. Referring to 202-E and F, the Lone Star Company is not mentioned in that exhibit, is it (indicating)?

A. Yes, sir, Mr. Neylan was there.

Q. Yes; but the company is not mentioned, or its sales policy as such?

A. No; I am telling you that he did have his sales policy with him.

Q. That is right. But that was presented, was it not, as the method of sale and distribution that was characteristic of the territory east of the Rocky Mountains?

A. As I have said before, and as the minutes of the Trade Practice Committee will bear out, after the preliminary, or first meeting with Captain Collins that Mr. McFadden and I had, we reported, or I reported, the questions in Captain Collins' mind, as expressed to us, at the next meeting of the Trade Practice Committee.

And at that time I was shown the sales policies as printed and distributed by one or more companies, and was told that this policy had become substantially the same for all companies in the East and Middle West.

Q. I note in Exhibit 202-F, after setting out the classes of business—I am reading now from the exhibit—it states, "The committee believed it would be in accord with such established practices for the United States Government to purchase direct from cement manufacturers in the
4323 following case:" and then it sets out five cases.

And:

"As to all other purchases and projects it was indicated that it would be in accord with the established practices of cement manufacturers in districts 1 to 9, inclusive, if the United States Government refrained from purchasing direct."

I take it that those established practices, so far as Federal relief emergency purchases were concerned, went back to this time in the summer of 1934 when the proposed amendment of Article 11 was presented to N. R. A.?

A. So far as I know they went back to the time with each company where it distributed its own sales policy.

Q. And were those distributed along in the early spring or late winter of 1935?

A. This is the first time I met them, and therefore I can't answer that question.

Q. Showing you papers marked for identification as 1022-P to S, inclusive, will you identify that as a photographic reproduction of a letter received by you from Mr. Neylan of the Lone Star Company (handing documents)?

A. (Examining documents.) Yes, sir.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: I do not think so.

Examiner Norwood: Received as marked.

4324 (COM. EX. 1022-P to-S was offered and received in evidence.)

(COM. EX. 202-I was offered and received in evidence.)

Q. Was there some confusion about the time of these exhibits, namely, about the middle of August, 1935, owing to the lack of specification in the invitations to bid on W. P. A. projects as to what the projects were?

A. Yes, sir.

Q. Did you take that up with Captain Collins in an effort to get him to issue instructions to his State Procurement Officers, describing the projects in each case in the case of each invitation?

A. Yes; inasmuch as he had indicated to us how the Procurement Division proposed to purchase cement for these projects.

Q. Did he issue a bulletin instructing his State Procurement Officers to identify the project and to identify

4325 the project by a description and location?

A. Yes, sir.

Mr. Leisure: Mr. Wooden, are you referring to the Committee that is mentioned in the letter, the letter that you just referred to, when you say confusion to someone, and then the witness replies "To us", are you referring to the Committee? Did you expect the answer to refer to the Committee when he said "us"?

Mr. Wooden: No. I took it to mean confusion among the mills and among the dealers.

By Mr. Wooden:

Q. What was the sort of confusion that you had in mind? You said there was some, owing to the lack of information as to the identity of the project.

A. The individual cement companies could not tell from the nature of the invitations to bid whether under their own announced policy the cement should be bought direct or through dealers.

4326 Q. Was there any confusion over lack of information as to where the cement was to be used?

The Witness: I think that the invitations were not always specific in that matter, Mr. Wooden.

By Mr. Wooden:

Q. Did you ask Captain Collins that they be made specific in that respect?

A. Yes.

Q. Were they made specific in that respect?

A. Generally speaking, they were, although there were many exceptions, which came to my notice.

4327 Q. Why were you interested in having them made specific in that respect; namely, as to the destination where the cement was to be used?

A. Well, again, what I have in mind is that under these individual sales policies as announced by cement companies, it would make a difference whether cement was to be sold direct or through a dealer depending on the location of the job.

Q. Was not the matter of quoting a destination price involved to some extent?

A. It was in some cases. I have in mind an invitation of the Procurement Officer of the State of California, who issued an invitation for an indefinite quantity of cement, but indicated it was large in amount, and asked for delivered prices, but did not say where the cement was to be delivered.

Q. In the event that—you say he asked for delivered prices without saying where it was to be delivered?

A. That is right. (Laughter.)

Q. I think we have some papers relating to that. I am not quite sure about the delivered prices with no destination.

Well, was not the factor of one dealer getting into the sales territory of another dealer, one reason for asking that the destination or location be made specific?

4328 The Witness: That was not a reason so far as I was concerned nor, I am sure, a reason of any other member of the committee that saw Captain Collins.

By Mr. Wooden:

4329 Q. Did not you have some contacts with dealers' associations that acquainted you with their position in that matter of dealers selling in another town?

The Witness: I, myself, had contacts with officers of national dealers' associations and I know that their information was that dealers' sales should be confined to the territory that he normally served.

By Mr. Wooden:

Q. What associations do you have in mind there?

A. The National Retail Lumber Dealers' Association and I have forgotten the exact name of the other one, but it was the National Builders' Supply Association, I think.

4330 Q. Was it the Federation of Builders' Supply Associations?

A. Yes, sir.

Q. Mr. MacQueen's organization?

A. That is right.

Q. Was one of the matters that you took up with Captain Collins about that time—in, say, August, 1935—the fact that some State Procurement Officers had specified f. o. b. mill quotations?

A. I am pretty sure that that matter was discussed with Captain Collins.

Q. And the issuance of instructions by him to give destination: Was that satisfactory to you as a solution of the matter?

The Witness: Mr. Wooden, Captain Collins had indicated that certain classes of their purchases would be solicited from the dealers and I think the burden of

4331 my discussion with him was that the practice in the industry was to sell dealers f. o. b. their destination and I called to his attention that where that was true, title to the cement passed to the dealer at his destination and that was the only place at which he, in turn, could transfer title.

By Mr. Wooden:

Q. If the sales had been made direct from the mills, the title would have passed at the mills?

A. Under Government destination cost.

Q. And in order to take advantage of Government bill of lading?

A. Yes, sir.

Q. Do I understand that Captain Collins indicated that he would not ask or have his Procurement Officers ask for bids from the mills on this W. P. A. work?

A. No, I think that is not a correct statement. He indicated, however, that in view of the purpose of the expenditure of this $4,800,000,000 fund that the sales policy, which he saw, of a cement company, was not unsatisfactory to him as a method of purchasing cement in his department.

Q. The difference in cost per barrel by buying from the dealers as against buying from the manufacturers was 15 cents, wasn't it?

A. I can't answer that. I presume, or may I say
4332 that this Modal mark-up which did fix the retail price of cement by the dealers under their code at 15 cents a barrel in carloads had long since passed out of the picture, so—

Q. (Interposing.) Was not the 15 cents differential or mark-up still in effect during the summer of 1935?

A. I understand that the so-called Modal mark-up went out with the dealers' code.

Q. You mean as a part of the code, or that it disappeared as a practice that no more 15-cent differentials existed?

A. It is my impression that during the days of the dealers' code it was mandatory, and after the end of the code period a dealer was again free to charge whatever differential appeared proper to him.

Q. Don't you know that the dealers' associations continued to favor that 15-cent mark-up?

A. Oh, yes, sir, I have heard that.

Q. Was not one result of the buying from dealers on this W. P. A. work that the Government could not take advantage of land grant rates which it might have had in buying direct from the mills?

A. Yes; in that part of the country where land grant rates existed, of course.

Q. Wherever there were land grant rates, sure. Did you hear any of the testimony of Mr. Hayghe, representing the Procurement Division?

4333 A. I read a copy of the transcript, but I don't remember it very clearly.

Q. I am showing you papers marked 1022-T, U and V for identification. Will you identify them as authentic

copies of correspondence between you and the Pennsylvania-Dixie Cement Corporation (handing documents)?

A. (Examining documents.) Yes, sir.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: No objection.

(COM. EX. 1022-T, U and V was offered and received in evidence.)

Q. Now, it appears from Exhibits 1022-U, your letter to Mr. Wing, that you doubted that it was reasonable for Captain Collins to advise his State Procurement Officers as to the classes of work on which they might expect direct bids. Did you adhere to that expression of opinion there, or did you ever ask Captain Collins to inform his State Procurement Officers as to the classes of work on which they might expect direct bids?

A. No, I never asked him to do that for the reasons stated there in the letter.

Q. Some reference is made in Exhibit 1022-V, your
4334 letter to Mr. Wing of September 27, 1935, that if manufacturers did not bid on certain projects that it would be understood at the Washington office of the Procurement Division?

A. Yes.

Q. Was that because you had previously explained to Captain Collins this established practice by which certain classes of trade were considered as belonging to the manufacturers, and certain classes to the dealers?

A. Yes, in the manner which I have explained that it was done.

Q. Showing you Exhibits 1022-W, X and Y for identification, will you identify those as correspondence passing between you and the sales manager of the Penn-Dixie Company at Des Moines, Iowa (handing documents)?

A. (Examining documents.) Yes, sir.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

(COM. EX. 1022-W, X and Y was offered and received in evidence.)

4335 By Mr. Wooden:

Q. Referring, Mr. Reiter, to Exhibit 1022-W, Mr. Hunt, the sales manager of the Penn-Dixie wrote you saying that he "found no indications that Captain Collins ac-

tually concurred in our committee's recommendation with respect to recognizing some class of business as being sold by dealers."

Then, in the next sentence he states he was "wondering if Captain Collins actually issued the instructions he agreed to do."

What instructions did Captain Collins agree to issue?

A. I am trying, Mr. Wooden, to make my answers very exact so far as Captain Collins is concerned, because I have every desire to refrain from miquoting him, even by accident.

I would say that no agreement was reached with Captain Collins. He did indicate to us that he would issue the bulletin such as is quoted in 1022-Y.

Q. And that was simply directing that the name of the project and location be shown in the State Officers' invitations?

A. That is right.

Q. I am showing you papers marked 1022-Z to FF, for identification. Will you identify them as correspondence between you and several companies on the Pacific Coast and also Captain Collins? I believe there is one letter to him.

4336 A. Yes, sir.

Mr. Wooden: I offer them for the record. (Handing papers to Mr. Leisure.)

(COM. EX. 1022-Z to FF was offered and received in evidence.)

Q. Was this the case you referred to, Mr. Reiter, some time ago about the California Procurement Officer asking for delivery prices without specifying destination?

A. Yes, sir.

Q. As I understand it, he wanted the prices delivered at any zone within various districts?

A. That is right—12 districts, I believe, in the State of California.

Q. Were there not some districts in California within which zone prices applied, so that the same price did apply throughout that district?

A. In the Code period, when they were filing prices under the open price provision, I remember one or two zones which were relatively small in and around Los Angeles, but that zone would be much smaller than these zones as described.

4337 Q. You referred here to a map that showed District No. 4. Was that district 4 of the W. P. A. districts?

A. Yes, sir.

Q. Did you have on file in the Institute at that time the prices applicable in those various zones around Los Angeles that you referred to?

A. No. The only information that we had on file were the old files of the Code Authority, and I don't believe I consulted them in handling this correspondence.

Q. Did those zone prices include prices made by dealers, or were they merely the prices made by the manufacturers to the dealers?

A. You mean the zone prices?

Q. Yes.

A. To which I referred?

Q. Yes.

A. On file with us?

Q. Yes.

The Witness: Now, may I have Mr. Wooden's question again?

(The question was read by the reporter.)

A. Well, they were prices made by the manufacturers.

Examiner Norwood: To the dealers or to the consumers?

The Witness: Here is what I have in mind: In
4338 the latter days of open price filing it became the custom by California manufacturers to file a price at which they would sell either the dealer or the customer, and from which they would allow a trade discount to a dealer.

Examiner Norwood: I see.

By Mr. Wooden:

Q. Then such prices would represent the prices to the consumer subject to the dealer's discount?

A. Yes.

Q. What was the outcome of this case here involved in Exhibits 1022-Z to FF?

A. I never was advised as to the outcome of that. I heard no more about it, so I presume that the bids were handled in some other way. That is the total of my knowledge of it there (indicating).

Q. It appears from the exhibits that Captain Collins was calling for a report from his California State Officer.

A. Yes, I mentioned it to Captain Collins once or twice since then, and I never did find out what the report was like, or what the decision was.

Q. At the same time you were handling such matters with Captain Collins were representatives of the dealers' associations also handling similar matters with him?

A. All I know about that is that I did know of oc-
4339 casions where he advised me that an officer of the dealers' association had talked to him about something along these various lines.

Q. I notice in the last lettered exhibit that the Southwestern Portland Cement Company said they understood "The Washington representative of the Lumber Industry, with whom you are probably acquainted, was making an investigation of this same subject"?

A. I remember that. I was not acquainted with that man, however, he refers to.

Q. Was that Mr. Carnahan?

A. No. He wasn't a representative of the Lumber Industry. He was executive secretary of the National Retail Lumber Dealers' Association.

Q. That is what I had in mind.

A. I don't recognize Mr. Carnahan from the description in the letter.

Q. I see. Did the dealers' associations' representatives that you refer to sometimes seek your assistance in taking up matters with Captain Collins?

A. No, I don't recollect that they ever did.

Q. Showing you papers marked for identification 1022-GG to MM will you identify them as correspondence and communications passing between you and the parties, other parties, included in the papers (handing documents?)

4340 The Witness: Yes, sir.

Mr. Wooden: I offer them for the record. (Handing papers to Mr. Leisure.)

Examiner Norwood: Is there any objection?

(No response.)

Examiner Norwood: Received as marked.

(COM. EX. 1022-GG to MM was offered and received in evidence.)

Q. I notice in 1022-II—your telegram to Captain Collins on November 27, 1935—that you told him that if this particular project were dealer business it was probable that no bids would be received f. o. b. mill, as the dealers are ordinarily sold for destination only.

What was your purpose in telling Captain Collins that?

A. Well, it is just a statement of fact. I was not familiar with the announced dealer policies—if there were such things—for the Pacific Coast companies, and so indicated several times in that correspondence, that being one of the places.

Q. According to 1022-HH, you telegraphed Mr. Partridge, of the Southwestern Company, that you were intimating to Captain Collins that if this were dealer business probably no bids would be received f. o. b. mills, but did not feel able to state definitely no such bids will
4341 be received and therefore requested Captain Collins to prohibit bids f. o. b. mill. Does that mean you did not feel able to request him to prohibit bids f. o. b. mill?

The Witness: Will you please read the question?

(The question is read.)

The Witness: Is that question correct, Mr. Wooden?

Mr. Wooden: It is correct, but it probably is not clear. Read the sentence in the telegram that I was referring to —1022-II. It is a sort of ambiguous statement in the telegram as I see it, and that is the reason I was asking the question.

The Witness: The sentence pointed out to me in the copy of my wire to Captain Collins reads as follows:

"If dealer business it is probable no bids will be received f. o. b. mill as dealers are ordinarily sold f. o. b. destination."

By Mr. Wooden:

Q. I think you have the wrong one there, Mr. Reiter.

A. I read from 1022-II.

Q. 1022-HH was the one I used.

A. Then, may I have the last question again?

(The question is repeated.)

By Mr. Wooden:

Q. Now, will you state how you interpret that last part of the sentence, whether it is subsidiary to the first
4342 statement or coordinate with it?

A. The last part of that sentence means I did not feel able, therefore, to request Captain Collins to prohibit invitations f. o. b. mill.

Q. Was the result of that case that Captain Collins stated no awards would be made on the invitations that was involved in those exhibits?

A. Yes, it was.

Q. Was that in line with your statement in your telegram to Mr. McFadden of November 29, 1935, that Captain Collins had taken action which was apparently the initial step by Collins for complete cooperation?

A. Yes, that was what was referred to in that wire to Mr. McFadden.

Q. I show you papers marked 1022-NN to QQ for identification. Will you identify them as communications passing between you and the other parties indicated (handing documents)?

A. (Examining documents.) Yes, sir.

Mr. Wooden: I offer them for the record.

(COM. EX. 1022-NN to QQ was offered and received in evidence.)

4343 Q. One of the questions involved in this situation represented by Exhibits 1022-NN to QQ was dealers in Arizona quoting on W. P. A. projects for delivery in towns other than their own, was it not?

A. Yes, that is one of the things that is considered there.

Q. The other was a question of whether commercial freight rates might be deducted from the bids, is that right?

A. That was still another one, but the third thing you have not mentioned to me is the important one.

Q. And what is that?

A. There is an illustration of objectionable efforts to buy on the part of the Government. Here they advertised for bids on 3,000 barrels of cement and attempted to buy 45,000 barrels on that invitation, contrary to the terms of the bid.

Examiner Norwood: How was it contrary? They attempted to buy it for lower than the bid price?

The Witness: No, sir. Apparently the manufacturers quoted the dealers—these were dealers bidding—f. o. b. their destination, which was Phoenix, Arizona?

By Mr. Wooden:

Q. Yes.

A. And 15 dealers in turn bid to the United States Government some price, probably higher than that, and
4344 instead of awarding a contract for 3,000 barrels, which was the quantity on the invitation, they did award contracts for 3,000 barrels to every dealer; in other

words, 45,000 barrels, and at a price f. o. b. the cement company's mill, not related, so far as I could tell from this, to the bid of the dealer.

By Mr. Zimmerman:

Q. How was that done? Do you mind explaining how that f. o. b. mill price was arrived at?

Examiner Norwood: How did that prejudice anybody, and whom did it prejudice?

The Witness: The dealers, if they accepted this bid, and unless they lost money on their proposal, would have to come back on the cement company, and they in turn would lose money on the dealers' proposal.

Examiner Norwood: I do not understand that.

By Mr. Wooden:

Q. Where is the question of loss involved, where is there any loss shown if each dealer were willing to sell 3,000 barrels at the price quoted? Why should not the whole 15 each be glad to sell 15,000 barrels, even though it were more than the particular project called for?

4345 A. Well, in my opinion, the proper proposal is for a definite quantity of cement and that apparently was the amount of cement they required at Phoenix. If they could work out this other plan and take delivery of this cement at other destinations than were proposed in their invitation, then they were willing to buy this additional amount of cement not contemplated by the original invitation.

Mr. Zimmerman: May I interrupt a minute off the record?

Examiner Norwood: I just want to know if that hurt anybody and how. To whom did it cause a loss?

The Witness: Your Honor, the dealers who bid were quoted by the cement manufacturers f. o. b. their destination, which was Phoenix and bid in relation to the price apparently that they were quoted by the cement companies. Now, the award apparently was made to these dealers at a different destination than Phoenix; namely, f. o. b. manufacturers' mills, and they were not quoted f. o. b. manufacturers' mills; so, what the government made by this purchase would be an equal loss to the dealers under the quotation that they had from the cement companies.

Examiner Norwood: Well, the dealers did not have to accept that, did they?

The Witness: Well, I do not know how it finally
4346 came out. I would not have accepted it if I had been the dealer.

Q. What concern was it of the Cement Institute whether these dealers took those orders and filled them for other destinations than Phoenix?

A. Of course the reason it ws called to our attention by members of the Cement Institute was that this State Procurement Officer who issued the invitations in this manner, and who offered the award in that manner, was under the direction of Captain Collins and I had had some contact with Captain Collins. That is the reason it was called to my attention.

Q. Was not this a stipulation that, in principle, came within the terms of the indnstry's position regarding diversions that had the effect of changing the destination price at the point to which the diversion was made?

A. Well, if award on the basis suggested by the State Procurement Officer was there accepted, it would, of course, have—I was going to say that it would have changed the manufacturer's price at other destinations, but I do not think it would, because this was a dealer's price and not a manufacturer's price, Mr. Wooden.

4347 Q. Now, in your telegram to Mr. Burnett, December 3, Exhibit 10-22-OO, you state that it was agreed —that is the dealers' organization agreed—"with us that this is bad practice, leading to destruction of dealers' business and direct selling by manufacturers not contemplated by cement companies' policies."

There was an effect upon the market. If the manufacturers sold direct it would be at the price to the dealer, would it not?

A. Yes, that is right. Now, I am afraid of that word "agreed" there which I have used. I mean we held the same opinions.

Q. Further in the same telegram—let me read this:

"We have discussed sales to government by dealers at other dealers' destinations with officers of both national dealers' associations and several state dealers' associations and all agree with us that this is bad practice leading to destruction of dealers' business and direct selling by manufacturers not contemplated by cement companies' policies or desired by dealers."

Then you went on to send a copy of your telegram to

all companies who had filed prices for delivery at Phoenix, Arizona.

A. Yes, sir.

Q. The dealers were interested in not having
4348 dealers in one town interfere with dealers in another town.

A. Yes, sir.

Q. And you had the same feeling of opposition to that that the dealers had when you said that they all agreed with you that that was bad practice?

4349 A. Yes. My reason may have been quite different from theirs, Mr. Wooden.

Here was the outlet for something more than 50 per cent of our material. And it was my opinion that the industry should give due weight to that fact.

Their opinion was probably based on the autonomy of various members of their association.

Q. Ordinarily would you say that unless the dealer from outside made his price lower than the local dealer that he would not be favored with the business in the other dealer's town?

A. Yes, I think that is right.

4350 Q. Mr. Reiter, referring to these exhibits 1022-NN to QQ, inclusive, did I understand you to say that under the facts of the situation there disclosed the dealers were being injured?

A. If they accepted the award on the basis I understood it was offered to them they would be injured.

Q. Do you mean the dealers at Phoenix or the dealers elsewhere than in Phoenix?

4351 The Witness: In an attempt to make it plain, here was a proposal for 3,000 barrels of cement required for delivery at Phoenix. Fifteen dealers bid on this quantity and all fifteen were awarded 3,000 barrels of cement.

The other 42,000 barrels was quite evidently not needed at Phoenix. And, therefore, if this award was taken by the Phoenix dealers, they would ship to other destinations, where the price would be higher than at Phoenix; depriving the dealers at other destinations of these 42,000 barrels of cement, which they would otherwise get any way, and giving the government a price to which they were not
4352 entitled by virtue of their bid f. o. b. Phoenix.

Moreover, the award in the way suggested for the

Phoenix dealers might, and in my opinion certainly would, give them less than that proposed by their bid, and may be a losing price.

4353 Q. As far as the first proposition is concerned, the injury was to dealers elsewhere than at Phoenix?

A. That is right.

Q. And with a prospective benefit to the dealers at Phoenix if they made a profit on their sales at all?

A. If they made a profit.

Q. But you do not know whether they made one or not?

A. No. It is necessary to make some assumptions here from the information furnished.

May I say further, Mr. Wooden, that in addition to being an injury to dealers at other places than Phoenix, it would disturb the manufacturers-dealers relations at all these other points and, to me, that is a serious matter.

Q. Would it have tended to disrupt the manufacturers' destination prices at those other points?

A. Well, it depends on how the award ws carried out.

Q. It might do so under certain conditions?

A. It might do so; yes, sir.

Q. Under what conditions?

A. If this cement were delivered to another destination at a price lower than the cement manufacturer would sell to dealers at that destination, that would prevent his dealer at that destination securing a price which would be the manufacturer's price plus some sort of commission.

Q. Would that tend to cause the dealer there to

4354 demand a lower price from his source of supply?

A. It might cause him to demand such a price.

Q. Showing you papers marked for identificatio 1022-RR and SS, purporting to be a copy of a circular of the Institute over your signature, will you identify it as an authentic copy?

A. Yes, sir.

Mr. Wooden: I offer it in evidence (handing paper to Mr. Leisure).

Examiner Norwood: As I understand it, these extra awards to Phoenix dealers were for delivery at other places?

The Witness: That was evidently what was contemplated in that additional purchase; yes, sir.

Examiner Norwood: And your only request then was

for delivery to Phoenix, but the contracts required them to deliver at other places?

The Witness: That is right.

Examiner Norwood: And where the freight to the other places was more than the freight to Phoenix, the dealer or contractor or someone had to stand it?

The Witness: That is right.

Examiner Norwood: Had to lose that amount?

The Witness: Yes, sir.

4355 (COM. EX. 1022-RR and SS was offered and received in evidence.)

Q. If you take the policy of the mills not selling these W. P. A. projects direct and having that handled through the dealers only, then, if the dealers took a position, as the evidence indicates, against the dealers of one community getting over into the territory or town of another dealer, then you have a situation where only the local dealers could actually handle this W. P. A. project work in that given community. Is that right?

A. That is right if the idea of the dealers which you express were carried out.

Q. Oh, yes.

A. Yes, sir.

Q. Did you have brought to your attention at any time that there were cases where one or two dealers only would bid on a given W. P. A. project?

A. Whether as an actual or theoretical case, that was discussed.

Q. Wasn't something like that involved in this Oklahoma situation, covered by Exhibit 1022-RR and SS?

A. (Examining document.) What was the question?

(The question is read.)

4356 The Witness: That was considered in the conversation with Captain Collins reported here.

By Mr. Wooden:

Q. Didn't the conditions have in them the possibility that only one dealer in one town would be the bidder on a given job in that town?

A. That was a possibility.

Q. How did this Oklahoma matter come out? What was the outcome of it?

A. I don't recall, Mr. Wooden, but I think I heard nothing further about it than that.

I believe that the dealers' association investigated the matter, and I paid no further attention to it than that meeting with Collins indicated there.

Q. You say in 1022-SS that "we discussed a situation with Frank Carnahan, secretary of the National Retail Lumber Dealers' Association." Whom do you mean by "we" there?

A. I think that is an editorial "we," meaning "I."

Q. It didn't mean you and Captain Collins?

A. No. I think I did not see Captain Collins in connection with this thing with Carnahan.

Q. You state here, "The Oklahoma situation, frankly, has caused something of a stir, and while it is not yet settled we have every reason to hope that it will be soon;" that is what led me to ask you in what way was it

4357 settled. You don't know?

A. No, I don't know.

Q. Referring for a moment to that Oklahoma—I mean to that Arizona case we had a few moments ago, what was the outcome of that?

A. I don't know that either.

Mr. Wooden: I desire to offer at this time an exhibit previously identified as number 202-C and D, a circular of the Institute to its members, dated December 17, 1935, over the name of Mr. Reiter.

By Mr. Wooden:

Q. You can look at it. I don't think you can add anything to the identification probably. (Handing document to witness.)

A. (Examining document.) I identify it.

Mr. Wooden: I offer it at this time.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Hershberger: No objection, no.

(COM. EX. 202-C and D was offered and received in evidence.)

Q. This Exhibit 202-C, your circular of December 17, states that "At the recent annual meeting of the

4358 Institute the question of government purchases was discussed informally, and it was suggested that your general manager should confer again in Washington on this subject." When was the annual meeting that you refer to there?

A. May I have the date of the letter again?

Q. December 17th.

A. Well, I don't remember the date, but it is usually held in the last part of November, or the early part of December.

Q. When you speak of the question of government purchases did you have in mind these W. P. A. purchases, or anything broader than that, or more than that?

A. I had in mind principally at least the purchases by the Procurement Division of the U. S. Treasury Department.

4359 Q. You speak here of conferring with Mr. Carnahan of the National Retail Lumber Dealers Association. What was the purpose of your conference with Mr. Carnahan?

A. Well, I imagine that that was just a general call. I see nothing in here to remind me of the purpose of that visit.

Q. At any rate it was about the subject of what was proper trade for the dealers and for the mills?

A. I do not have my memory refreshed by that thing to that end. I would say it was a general conversation about the situation in our respective industries and I was reporting what he said about his own industry of interest to ours.

Q. You report him as saying that the dealers in his organization seem to be generally satisfied with their relations with the cement manufacturers. The point I was getting at was whether you were suggesting to Mr. Carnahan that the dealers ought to do something about this situation such as was being complained of in Oklahoma.

A. Well, I do not recollect that I did, nor does that refresh my memory in that respect. What I was pointing out to my members there, Mr. Wooden, was a decided change which I saw in the relationship or the feeling of the dealers toward the cement manufacturers from January, 1934, until the date of this letter.

Q. A decided change in what way?

4360 A. A more friendly feeling of our principal customers for the manufacturers.

Q. I notice in this circular you ask your members to—"We trust you will continue to use the Cement Institute for a general clearing house in problems affecting the industry and particularly for problems of this sort."

By "this sort" I take it you mean matters of what trade was proper for the mills and dealers in selling W. P. A. or the Procurement Division?

A. No, the letter itself referred to Government purchases and what I undoubtedly had in mind was using our offices to present any proper matter to the Government purchasing agency.

Q. Referring back to 1022-RR and SS—your circular of the same date—to members in District No. 8, you refer there to the members of that District having discussed the situation at a meeting in Chicago. Did you attend that meeting?

A. Which exhibit now are you referring to?

Q. 1022-RR and SS.

A. Well, I imagine I did—during the time that this matter was discussed anyhow. I have no recollection.

Q. Did I understand you to say you think you did attend the meeting?

A. Yes, I think I did.

Q. What was the result of that meeting, if any?

4361 A. Well, the substance of the discussion there indicated was the only thing about it that I remember and that was a matter which had been given wide publicity in Oklahoma newspapers—adverse publicity, so far as the cement manufacturers were concerned.

Q. Was it the result of the meeting that you should then consult with Captain Collins about the Oklahoma publicity? I believe it is suggested there.

A. Yes, sir.

Q. Was it the common thing for members of the various districts to hold district group meetings on the occasion of their attendance at annual meetings of the Institute?

A. That was sometimes done. I do not know whether you could say it was the custom or not.

Q. I said "common."

A. Oh, common.

Q. Yes.

A. Well, sometimes it was done and sometimes not.

Q. Depending on whether they had something to discuss?

A. One reason for having group meetings was that that was a necessary way to elect district trustees and so I will change my answer to say that it was necessarily a common thing at the annual meeting.

4362 Mr. Wooden: Your Honor, I offer in evidence at this time some exhibits previously identified.

Mr. Wooden: They are 202-T, S, R, Q, N, P, O, L, and M.

I think they are all from the files of the Institute, chiefly correspondence with Mr. Reiter, if not wholly so, or copies of material sent him.

I would be glad to show them to the witness after I have offered them, which I now do.

Examiner Norwood: Back to the record: Any objection to those?

Mr. Leisure: I do not think so, but just a minute.

Examiner Norwood: Any objection to them?

Mr. Leisure: I would like to ask the witness some questions about some of these, your Honor, if I may.

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Reiter, did you receive that letter from Mr. Wing?

(Handing letter to witness.)

4363 A. Yes, sir.

Q. Give him the exhibit number, will you please?

A. 202-O.

Q. Who was Mr. Wing, Mr. Reiter?

A. He was general sales manager of the Pennsylvania-Dixie Cement Company or corporation.

Q. And this letter marked 202-P for identification, signed "general manager," was that written by you?

A. Yes, sir.

Q. 202-T seems to be a memorandum signed by J. M. Wilkerson. Do you know who Mr. Wilkerson was?

A. He was sales manager for the Penn-Dixie Company at Atlanta, Georgia.

Q. Had you received a copy of 202-L? That memorandum is signed by Mr. Wing, apparently going to Mr. Wilkerson.

A. Well, apparently I had, judging from this file marked here (indicating), which is my file stamp.

Q. Did you also receive a memorandum, 202-S, from Mr. Wing, or any one else?

A. (After examining document.) There is nothing I recognize on here which would indicate whether I did or not.

Examiner Norwood: Do you know anything about it?

The Witness: I don't recollect anything about this particular case which he discusses.

By Mr. Wooden:

4364 Q. Calling your attention to a note upon the bottom, "CC—Mr. G. H. Reiter, Chicago?"

A. (After examining document.) Yes, I see that, Mr. Wooden.

In the ordinary course of office procedure that would indicate that a copy was marked for me.

Mr. Leisure: Do you know where the exhibit came from, Mr. Wooden?

Mr. Wooden: I think they all came from the Institute's files.

Mr. Leisure: From the Institute's files?

Mr. Wooden: Yes.

By Mr. Leisure:

Q. Is that a photostatic copy of a letter you received from Mr. Wing also, Mr. Reiter, 202-R? (Handing document to the witness.)

A. (After examining document.) Yes, sir, I received that.

Q. And did you write this letter 202-Q, or is that a photostatic letter that you did write, I mean? (Handing document to witness.)

A. (After examining document.) Yes.

4365 Mr. Leisure: Did you receive the original of the photostatic 202-N?

The Witness: Yes.

Mr. Leisure: Your Honor, subject to checking, as to these two exhibits, 202-L and 202-T, we have no objection. I assume they are correct, but they are merely typewritten, memoranda and I would like to check them.

(COM. EX. 202-L and 202-T was offered and received in evidence.)

Q. In general, Your Honor, I should like to say that some of these exhibits just received tie up with and relate to exhibits that were offered from the files of the Procurement Division of the Treasury when Mr. Hayghe was a witness. I particularly have in mind 202-S, relating to the Centerville, Mississippi, case.

I notice, in Exhibit 202-T, Mr. Wilkerson's communica-

tion to Mr. Wing, the statement is made that quotations were made direct in Florida as distinguished from other States. Do you know why it was that quotations on W. P. A. purchases were made direct in Florida and not in other States?

4366 A. I do not believe I knew at that time. I can tell you from my present knowledge, and that was that the sales policy of the Universal Atlas Cement Company, I am informed, could not be made to apply in Florida at the same time because of competitive conditions there.

Q. That is, the Universal Atlas sold direct in Florida as distinguished from other States? Let me understand that answer. I am not quite sure.

A. Their announced and printed sales policy, which was distributed to dealers, was not sent out at the same time in Florida because they thought that it would limit or retard their business in Florida because of competitive conditions which they had to meet.

Q. What competitive conditions do you refer to?

A. I mean that other cement companies were selling W. P. A. cement for instance direct in Florida and if the Universal Company had not met that situation, they would have shipped no W. P. A. cement.

Q. Did there come a time when the same policy was applied to Florida that had been applied to other States?

A. Quite recently we set out our sales policy in Florida the same as it had been in existence elsewhere for some time.

Q. How recently?

A. It is about a month or six weeks ago.

Q. Had the competitive conditions that prevented

4367 your doing so before been changed?

A. Our salesmen picked up in the field sales policies mailed to dealers by competitive cement companies and we mailed out our sales policy when we received that information.

Q. With regard to this Mississippi matter—Centerville, Mississippi—that is referred to among these exhibits, you received a copy from Mr. Wing of one of his inter-office communications, Exhibit 202-S. What did you do regarding the Mississippi case?

A. I do not recollect the case, nor what I did about it, if anything.

Q. Referring to Exhibit 202-Q—your letter to Mr. Wing

acknowledging the Mississippi communication regarding the Mississippi case and the Georgia case—did you consult with Mr. Carnahan and Mr. MacQueen about it?

A. I do not recall. (After examining paper.) Now I do recall.

Mr. Leisure: You mean after reading the letter, Mr. Reiter?

The Witness: After reading the letter; yes.

Mr. Wooden: All right.

The Witness: I recall having an expression of opinion from both Mr. Carnahan and Mr. MacQueen on this matter.

By Mr. Wooden:

4368 Q. What is the clause that is referred to in the paragraph which mentioned Carnahan and MacQueen?

A. Well, the clause is not revealed here, but the thing that was under discussion was the dealers bidding on Government invitations which contained a clause allowing the Government to deduct the commercial freight from the bid price back to the mill, and inasmuch as these dealers were sold f. o. b. destination, the dealers' organizations were concerned about their members bidding under a condition which they could not fulfill.

Q. In other words, the dealers in quoting should not use that so-called—is that the control clause that has been referred to?

A. No.

Q. You described it as deducting—

Examiner Norwood: No, that is the Government clause.

Mr. Wooden: Sure; I should have known that.

By Mr. Wooden:

Q. Did you discuss the matter with Captain Collins of the use by dealers of that clause in quotations?

A. I don't recollect whether I did or not, Mr. Wooden.

Q. The reference here in 202-Q to Mr. McFadden having seen Mr. Carnahan and later seen Captain Collins: was that about this clause that has been referred

4369 to about the deduction of commercial freight?

A. Yes. It apparently refers to the same matter, and this indicates that I myself (indicating document) did not see Captain Collins.

Q. That clause that we have been referring to, did it also include in the cases of W. P. A. purchases a provision for the exchange of the commercial bill of lading for government bill of lading at destination?

A. Well, for a short time that was done, or attempted by the purchasing officers or delivery officers of the W. P. A.

Q. Did you discuss that feature of the clause with Captain Collins?

A. I don't recollect.

Q. You don't know whether you made any effort or whether any effort was made within your knowledge to have W. P. A. instruct its State Procurement Officers not to try to get commercial bills of lading exchange for government bills of lading?

A. No, so far as I remember there was no effort to accomplish that end with Captain Collins.

Examiner Norwood: Was there any effort made in any other directions to accomplish that?

The Witness: Not so far as I know, your Honor.

4370 By Mr. Wooden:

Q. Were you familiar with the issuance by the Procurement Division of so-called SPO 72?

A. Did that refer to the cessation of exchanging Federal bills of lading for commercial bills of lading at destination?

Q. I believe so.

A. If so, I was familiar with it some time after it was in effect.

Mr. Wooden: I offer at this time papers previously identified and marked 201-A, B, C and 202-DD. That is quite a jump.

By Mr. Wooden:

Q. They have been previously identified, but you are a party on one end of all of the communications, so I will show them to you and let you further identify them, if you will? (Handing documents to witness.)

A. (After examining documents.): Yes, sir, I remember this correspondence.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Hershberger: No objection.

(COM. EX. 201-A, B, C and 202-DD were offered and received in evidence.)

4371 Q. Are Exhibits 201-B and C in your handwriting? (Handing documents to witness.)

A. (After examining documents.) Yes, sir.

Q. Was there some one factor involved in this case here that the Florida State Procurement Officer was awarding a contract to the most distant bidder?

A. Apparently he misinterpreted that bulletin No. 72 of Captain Collins, and therefore he was awarding contracts to the mill which had the lowest derived price f. o. b. mill, irrespective, or, rather, if the government destination cost bid was the same as other bids.

Q. It might be in the case of Florida, might it not, that the lowest destination price, I mean the lowest derived mill price, might produce the lowest destination price if a land grant rate were involved?

The Witness: That is a little confusing to me, but I think in the bids under discussion a government destination cost was bid.

By Mr. Wooden:

Q. And how was the derived mill price arrived at?

4372 A. By observing the control clause, which was bid as a part of the government destination cost.

Q. Not by deducting the commercial rate?

A. Not by deducting the commercial rate; except, of course, Mr. Wooden, where the commercial rate was the lowest rate, as provided in the control clause.

Q. Did you ever know of a case where the commercial rate was lower than the land grant rate?

A. I have known of cases where it was the lowest rate.

Q. In the sense of being the only rate perhaps?

A. Now, that is a little technical, but you are still wrong. (Laughter.)

If the land grant rate,—a land grant rate can be higher than a commercial rate, but we then discard it as being of no value.

Q. It is quite technical then?

A. Yes.

Q. In Exhibit 202-DD, Captain Collins wrote you about this Florida matter, and the instructions that were to be given to the State Procurement Officer in Florida concern-

ing purchases of cement. Then he says, "These were along the lines we discussed when you were in the office." What were the lines you discussed with Captain Collins in his office?

4373 A. I merely presented those facts which were received by me while in Washington by telephone from Tampa, Florida. And as the correspondence there would indicate, Captain Collins did not believe that any State Procurement Officer as competent as the one that he had in Florida would award in the manner indicated, inasmuch as he felt that he was required by opinion of the Comptroller General in such cases to award by lot.

So the wire was sent, as indicated, of which you have a copy, and in response to that I received a list of specific cases where it had occurred, went back to Captain Collins and gave him the list, from which I assumed that he advised his State Procurement Officer that that was an improper method of award.

Q. That it should be by lots in case of identical bids?

A. In case of identical bids; yes, sir.

Q. Did you have any objections from any organization of retail dealers in Florida to the policy which you say was in effect for some time of selling direct in Florida for W. P. A. projects?

A. We had none; no, Mr. Wooden.

Q. Did the Universal Atlas Company have any?

A. I do not know. I would presume so.

Q. Did they have any representations from dealers' organizations in Florida prior to this change in pol-

4374 icy by which you sold through dealers?

A. Do you mean immediately before our recently announced policy of which I spoke?

Q. I do not want to make it immediately, but within a reasonable time.

A. The answer is that none has reached my attention.

Mr. Wooden: Your Honor, I offer in evidence at this time Exhibits previously identified and numbered as 202-EE and BB and CC, being communications from the files of the Institute. I believe 202-EE is in Mr. Reiter's handwriting.

Examiner Norwood: What is that?—CC, EE and BB?

Mr. Wooden: EE is the one I gave first and then BB and then CC (handing papers to Mr. Leisure).

Mr. Leisure: I have an objection, Your Honor.

Exainmer Norwood: All right.

Mr. Leisure: As to Exhibit 202-EE, being a telegram of Mr. Reiter, I have no objection.

As to the other two exhibits—202-BB and 202-CC
4375 —we object to them, Your Honor. 202-CC is incompetent, irrelevant and immaterial. It comes from the Sterns Coal & Lumber Company, Inc., to the Cement Institute. Clearly the respondents in this case are not bound by communications from the Sterns Coal & Lumber Company—and the other one is in reply.

Examiner Norwood: That is CC?

Mr. Leisure: Yes; BB and CC.

Examiner Norwood: BB is the telegram from the Cement Institute in reply to the other companies.

Mr. Leisure: The one on top is the reply. They should be the other way around.

Mr. Wooden: I would like to state, Your Honor, that the telegram from the dealer Sterns Coal & Lumber Company—is simply a natural and logical outgrowth of the activities that the Cement Institute was engaged in at the time in connection with the furnishing of W. P. A. requirements, the W. P. A. requirements being left with the dealers and then with the dealers being opposed to dealers getting out of their home territory and into the territory of other dealers, this was just the protest of one dealer who was being encroached upon by some other dealer.

Examiner Norwood: Is this Bulletin No. 11, which this dealer mentions—is that in evidence?

4376 Mr. Wooden: I want to ask the witness about it.

Examiner Norwood: This is a disclaimer of the Cement Institute having anything to do with these matters.

Mr. Wooden: Yes. As a matter of fact, however, in the Arizona case we found the statement that they had consulted with the officers of dealers' associations and those officers agreed with the Institute that for dealers to get out of their home territory was bad practice, et cetera.

Examiner Norwood: I shall overrule the objection and admit it on counsel's promise to connect it up in some way.

Mr. Wooden: My position is that it already has been connected up as one of the natural outcomes of the activity, joint activity, if you please, that was going on between the Institute and the dealers' associations.

(COM. EX. 202-BB, CC and EE was offered and received in evidence.)

Q. What is bulletin 11 that is referred to in this
4377 202-CC, Mr. Reiter?

A. I don't know. It was no bulletin of the Cement Institute.

Q. Now, referring to 202-EE was there any doubt at any time as to whether Indian Agency purchases came within the class that should be handled through dealers or through manufacturers direct?

A. I don't recollect what that instance was there, but I think that that sale was direct, being—

Q. (Interposing) My point—pardon me—

A. (Continuing)—the Department of Interior.

Q. My point was how was there any room to raise a question over whether Indian agencies should be sold direct or not? Weren't they part of the permanent agencies of the government that were still being sold direct?

A. There was probably some other point involved there, Mr. Wooden, but as the telegram states, I returned the file, and I have no further recollection of it.

Mr. Wooden: I offer in evidence at this time exhibits previously identified and numbered 202-AA, 202-Z, 202-Y, W and X.

Examiner Norwood: Wait a minute. Are all
4378 those double numbers you are calling there?

Mr. Wooden: No.

Examiner Norwood: Call them again.

Mr. Wooden: AA and Z, Y, W, and X. Only one of them is a double letter.

Examiner Norwood: All right.

Mr. Wooden: They are photographic reproductions of correspondence to which Mr. Reiter appears to have been a party, either receiving or sending.

By Mr. Wooden:

Q. I will have him look at those first and see if he is willing to concede their authenticity. (Handing documents to the witness.)

A. (After examining documents.) Yes, sir, Mr. Wooden.

Mr. Wooden: I offer them for the record.

Examiner Norwood: Any objection?

Mr. Zimmerman: I have not examined but one of them as yet.

Mr. Leisure: As to Exhibit 202-Y, being a letter written by the witness, we have no objection.

As to 202-Z and 202-AA we object to both of those ex-

hibits, one of them being in the form of an inter-office communication between a company known as the Indiana Lumber and Builders Supply Association—

Mr. Wooden: (Interposing) Inter-office?

4379 Mr. Leisure: And as to 202-Z, that also is written apparently by the secretary of the National Retail Lumber Dealers' Association, and we say that both of those letters are incompetent, irrelevant and immaterial, not binding on the respondents, and no proper basis has been made for their offer in evidence.

4380 As to 202-W, also a letter apparently written by the Secretary of the Indiana Lumber and Builders Supply Association, we object as being incompetent, irrelevant and immaterial and no proper basis having been laid for its offer in evidence.

Mr. Wooden: Your Honor, it already appears clearly, I think, in the record that on the subject-matter of these papers, the Institute, through its representatives, was working with the representatives of these dealer associations to carry out the program of having certain Government purchases handled through the dealers and certain other Government purchases handled in the usual way, direct.

Of course the dealers' interests were from the standpoint of having the W. P. A. purchases handled through the dealers.

Mr. Leisure: I do not recall any testimony in the record to that effect, Your Honor, and counsel's statement—

Examiner Norwood: Let counsel finish and we will proceed.

Mr. Wooden: I think there is some testimony, but the exhibits are the principal things I have in mind. The exhibits are to the effect, I think quite clearly, that the various dealer associations were cooperating with

4381 the Institute and this is just another instance of that sort of cooperation.

Mr. Leisure: I assumed counsel's statement was reviewing the testimony showing how these exhibits were admissible in evidence. If that is the purpose of the statement—

Examiner Norwood: I think that was the idea.

Mr. Leisure: And that this condition as just stated by counsel did not exist, I think is shown by 202-Y, which is a disclaimer of any such relationship existing.

Examiner Norwood: 202-Y is the letter of the witness here?

Mr. Wooden: I would like to call attention further to paragraph 7(f) of the complaint which alleges an understanding to limit sales to middlemen to those who fell within the respondents' definition of a cement dealer.

Mr. Leisure: The complaint also is not in evidence and so, unless this has something to do with the record, it will not help the exhibits in any way as to being admissible.

Mr. Wooden: That just goes to the relevancy and not to the competency.

Examiner Norwood: The only value that these
4382 could have is that these people thought that the Cement Institute would handle it.

Mr. Wooden: It is also in evidence, I might say at this time, that this case figured, in the last few weeks or months' experience of Mr. Cree as manager of the Aetna Company, and there are testimony and exhibits already in the record as to disputes that arose over the Indiana sales.

Examiner Norwood: Did this come from the witness' files?

Mr. Wooden: That is my understanding, Your Honor. I would like to check that. He has acknowledged they are authentic communications which he either wrote or received, as I understand it.

Examiner Norwood: Now, suppose you question the witness further as to what connection he has had, off the record, as it were, in regard to these things, if any; otherwise, as evidence against Aetna, it is hearsay.

Mr. Wooden: I expected to ask the witness about the matter on the record, but I submit, Your Honor, that the exhibits are admissible on the ground that I have previously stated, as an outcropping, in a particular situation, of a program that was being jointly carried on by the Institute and the organized dealers handling cement,
4383 among whom were the retail lumber associations.

This Mr. Carnahan, of the Retail Lumbermen's Association, that we have seen referred to many times among the exhibits, is the man who sent this copy from the Indiana association to the witness.

Examiner Norwood: None of these respondents appear to be responsible for that letter and to have accepted it and acted on it. In fact, he states in one of those letters that the Cement Institute had nothing to do with it.

Mr. Wooden: That is another exhibit you are referring to, your Honor, relating to—

Examiner Norwood: (Interposing) No, it is there. It is AA, I think.

Mr. Wooden: Here is one, of course, where the witness acknowledges Mr. Carnahan's letter and says he is afraid he cannot offer any suggestions.

Examiner Norwood: Did you take any action in regard to that matter, Mr. Witness?

The Witness: I notified Mr. Cree that I had received a letter from Mr. Carnahan and told him the nature of my reply and told him that that closed the matter as far as I was concerned.

Mr. Wooden: I think that, added to what was done before—the general program to which I referred—is
4384 sufficient to make these documents admissible.

(COM. EX. 202-W, X, Y, Z, and AA was offered and received in evidence.)

Q. Do you remember anything about the Lone Star Cement Company being interested in this matter of the Aetna Company's sales to the Indiana Farm Bureau Federation?

A. I knew nothing about it.

Q. Did you know, during the time this correspondence was going on, of any complaints having been made by other cement mills to the Aetna Company?

A. No, I did not, Mr. Wooden.

Q. Did you have any knowledge at the time of Mr. Cree's discharge as sales manager of the Aetna Company?

A. May I have that question?

Examiner Norwood: Read it.

(The question is read:)

The Witness: No, sir.

By Mr. Wooden:

Q. I mean at the time of his discharge?

A. I knew of it promptly. I did not know of it prior to its happening—that is, that it was impending.

4385 Q. How did you get the prompt information?

A. Well, those things are usually sent out in the industry with an announcement card and I presume that is the way I got this.

Q. You do not remember just how it was?

A. No, I do not remember it.

Mr. Wooden: I offer in evidence at this time, your Honor, the exhibit previously identified and numbered

202-U, being a letter from the witness to Mr. Du Que, of Los Angeles, under date of October 16, 1936.

Do you recognize that letter, Mr. Reiter?

The Witness: I remember the letter.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objections?

Mr. Leisure: No objection.

(COM. EX. 202-U was offered and received in evidence.)

Q. Mr. Reiter, in this letter you informed your trustee on the West Coast of a complaint from Captain Collins, of the Procurement Division, that they were unable to get competitive bids, and that the recent bids showed an unjustifiable advance of 50 percent. That was a
4386 case of bidding on the part of the dealers in which the manufacturers did not participate, I take it?

A. Yes, sir.

Q. Arizona was one of the States where purchases of W. P. A. were handled through the dealers, and not through the manufacturers?

A. Apparently so. I don't think I ever saw any company's sales policy who did business in Arizona, but apparently that was true.

Q. Do you know what the outcome of the matter was?

A. No.

Here was a case where Captain Collins had a telegram, apparently from his State Procurement Officer out there, complaining about the condition, which I tried to check up as a service to Captain Collins.

So far as the cement manufacturers are concerned, it was not true. So far as they knew there was no such increase in the dealers' prices.

And, therefore, I relayed this information back to Captain Collins, and I presume he satisfied himself that the information I gave him was true, and dropped it.

Q. It was reported to you by Mr. Du Que that there was no increase in the manufacturers' prices to the dealers?

A. Yes, sir.

Q. It is stated here that Captain Collins was go-
4387 ing to obtain further information and communicate with you further. Did you get further information from him?

A. I never had any further communication with him regarding that matter.

4389 Washington, D. C.,
Thursday, March 17, 1938.

4390 Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday the hearing will now reconvene in the main hearing room of the offices of the Federal Trade Commission, 815 Connecticut Avenue, at 10 o'clock a. m., March 17, 1938.

The appearances are the same.

I now want to take up these exhibits which were offered on yesterday just as we closed.

I have examined the papers marked for identification 150 and 149-A, and the objections are overruled, and they are received in evidence as marked.

(COM. EX. 149-A and 150 were offered and received in evidence.)

Examiner Norwood: Now, there is a white arrow marked on Exhibit 150, pointing to section 4, which is referred to in the letter marked 149-A. I can mark that off if the respondents desire it. It can be covered with ink.

(No response.)

Mr. Hershberger: Shall I go ahead, now, your Honor?

Examiner Norwood: Go ahead.

Mr. Hershberger: I have 46 documents or papers from the files of the Universal Atlas Cement Company.

4391 which were selected by Mr. MacIntyre from an examination of some files that I brought to his office and went over with him, and I tender those to your Honor under the subpoenas that were served upon the officers of the Universal Atlas Cement Company.

Examiner Norwood: Yes.

Mr. Hershberger: Subject of course to the same objections and conditions as the other papers which were submitted.

Mr. Wooden: Will they be given a number?

Mr. Hershberger: That is 46 papers. Are you going to give them a number now, if your Honor please?

Examiner Norwood: Yes. They may be marked for identification Commission's Exhibit 1023-A to TT for identification.

(COM. EX. 1023-A to TT was offered and received in evidence only for identification.)

Examiner Norwood: Go ahead.

Mr. Wooden: Your Honor, my attention has been called to an error in yesterday's record, which may as well be corrected now; on page 4365 the reporter's notes show that Exhibit 202-L and 202-T were received in evidence, whereas on 4362 the offer ran from 202-L to M. In other words, it is 202-L to 202-T, inclusive, rather than merely the first and last of that series.

4392 Examiner Norwood: Yes. Let the record show that.

4393 GEORGE H. REITER resumed the stand as a witness for the Commission and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

4394 Q. Mr. Reiter, referring to Exhibit 150, being a letter to Mr. Blaine Smith, from Mr. Campbell, president of the National Builders Supply Association, setting forth certain practices that he suggested be included as unethical practices in the Institute's Code of Ethics, will you say which ones of those practices were later covered by the Code, whether the Code of Ethics or the N. R. A. Code (handing letter to witness)?

A. Of the seven items listed here, being suggestions from this man, who was president of the National Builders Supply Association, only one was included in the N. R. A. Code.

Q. And what one was that?

A. To quote "The practice of certain cement manufacturers of selling contractors sand, gravel or slag either direct or through a subsidiary, at a cut price in order to influence the sale of cement."

4395 Q. Was not the matter of blanket contracts covering anticipated requirements of concrete block manufacturers and other products manufacturers covered by some provision in the N. R. A. Code?

A. Yes, but this gentleman suggests that they be done away with and the Code provided for their use.

Q. Under certain limitations as to time?

A. Yes.

Q. And as to No. 7, was there some provision made on that subject?

A. Not as he expresses it here; in other words, requirement contracts with States were made, for maintenance purposes.

4398 Q. I am showing you, Mr. Reiter, a pamphlet, a printed pamphlet entitled "Manual of Accounting for the Cement Industry, Prepared and Adopted by the Code Authority 1934." Was that distributed among the members of the industry? (Handing document to witness.)

A. (After examining document.) Yes, sir, among the members of the industry and others.

Q. Does it represent substantially the methods of accounting used in the industry?

A. The N. R. A. Code provided that such a cost manual or an accounting manual, should be prepared, and thereafter its principles be used by all members of the industry. That manual was prepared in response to that article in the Code, and was approved by the Administrator of N. R. A. Whereupon it was distributed to all members of the industry, and to others who inquired for it outside of the industry.

Q. Have the principles of the manual as stated therein been accepted by, say, the Universal Atlas Company?

A. I don't even know for our own company. (Examining document.) Well, I don't know.

Q. Referring to page 76 of the manual of cost accounting, there is shown there what is called a trading and profit and loss statement. Is that on a monthly basis?

4399 Q. Is that sort of a trading and profit and loss account monthly used in the Universal Atlas Company?

The Witness: I cannot answer that question. This form, or a similar form, may be used in our accounting department, but it is not the statement which I receive in the sales department.

4401 Q. Do you have in the sales department a showing monthly of the total cost of the cement sold and the net sales and the net operating profit?

A. Yes, sir.

Q. How are the figures for the net sales arrived at?

4402 The Witness: My difficulty in answering the question, Mr. Wooden, is that I am in no sense an accountant.

By Mr. Wooden:

Q. But you are a sales manager?

A. Yes, and I accept the accounting department's figures as being correct.

Q. On net sales?

A. On net sales; yes, sir. I believe that the net sales are the gross amount of money received by the company for goods sold.

4403 Q. When you say the gross amount, do you mean including the discounts, or is it absolutely net with all discounts taken off?

A. It would be with discounts off. If discounts were taken it would not represent the money received.

Q. You make up your reports of sales from the compilation of those monthly totals of net sales?

A. The accounting department makes up those reports.

Q. And you get the total for the year by compiling and totalling the months?

A. That is right. They make a report on the current month and for the year up to date.

Q. Are those things figured on a barrel basis so that you have the net per barrel of all your sales and the net cost per barrel of all your sales?

A. Yes, both the total amount and per barrel.

Q. And is it by comparing your nets with your costs that you determine whether or not you are making a

4404 profit or showing a loss?

A. Yes, except that from the gross amount received there will be other deductions.

Q. What kind of deductions?

A. Well, in my answer, Mr. Wooden, I am not sure whether these would be deductions from amounts received or additions to costs—on which side they would be in. I am not qualified to answer those questions.

Q. I am approaching it from a sales standpoint primarily. That is what I am asking.

Is it customary in the industry for mills to compare their net sales with their costs in order to determine whether they are making or losing?

A. I do not know, Mr. Wooden.

Q. Do you see any other way in which that question—

Mr. Zimmerman: I object, Your Honor—

Examiner Norwood: Objection sustained.

By Mr. Wooden:

Q. Do companies or mills in the industry publish figures from time to time showing their net sales?

A. Many companies make public a financial statement.

Q. Which includes net sales?

A. In total amounts; yes.

Q. I take it that in calculating net sales, there is no freight included?

4405 A. Well, again, I do not know. In the gross amount received will be included prepaid freight.

Q. But not freight that is not prepaid of course?

A. Not freight that is not prepaid; no, sir.

Q. Most of the freight is not prepaid?

A. Well, a considerable amount of freight is prepaid. I do not know what the proportion is.

Q. Ordinarily the amount of freight is deducted from the invoice?

A. I would not say ordinarily because freight is prepaid, as I have said, to prepay stations. It is prepaid, if required, to the United States Government and State Governments and it is prepaid to many other points where freight tariffs require that it be prepaid, from any shipping point and that is a considerable part of the whole.

Q. Would that be included in net sales or gross sales?

A. As I say, it would be included in gross sales.

Q. But not in net sales?

Mr. Zimmerman: I object. Now we are arguing it over a question of accounting.

Examiner Norwood: I will sustain the objection.

Mr. Wooden: I am asking him, as sales manager, what figures on net sales mean and what they included. I am not asking him as an accounting proposition.

Mr. Zimmerman: I think the witness has already
4406 stated he is not an accountant and does not understand these things. These accounts are all made by the accounting department.

Examiner Norwood: I have already ruled on it and it is useless to discuss it further.

Mr. Zimmerman: All right, Your Honor.

By Mr. Wooden:

Q. I take it that the total of net sales is the total of the mill nets on all the sales made?

Mr. Zimmerman: Again I object. Counsel is persisting in exactly the same line of questions.

Examiner Norwood: Can you answer that of your own knowledge?

The Witness: May I hear the question?

Examiner Norwood: Read the question.

(The question was read.)

Examiner Norwood: Do you know anything about that?

The Witness: Yes, I think that is correct, Your Honor.

Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. Let us assume a case where the delivered price is $2 a barrel and the freight is $1 a barrel and the cost is $1.25 a barrel; Would you figure that you were making a profit or losing money on that sale?

4407 Mr. Zimmerman: I object. This is not an examination to test this witness' ability to either as a mathematician or an accountant.

Mr. Wooden: The question is addressed to him as a sales manager.

Mr. Zimmerman: It does not make any difference. Maybe he is a bad sales manager and maybe he does not understand arithmetic. What of it? I think we are wasting time to put hypothetical questions involving a question of simply arithmetic to a man who has the position of sales manager.

Examiner Norwood: Read the question.

(The reporter read the question.)

Examiner Norwood: Objection overruled: Let him answer that question.

The Witness: I have to ask you a question on that example of yours, Mr. Wooden.: When you say the cost is $1.25 a barrel, do you mean that that is the total cost f. o. b. cars?

Mr. Wooden: Total cost f. o. b. cars; yes.

The Witness: And on that basis, what is the out-of-pocket costs on that cement f. o. b. cars?

By Mr. Wooden:

Q. You mean less than $1.25? I don't know.

A. It is bound to be less than $1.25.

4408 Q. I am assuming that the total cost is that, including the out-of-pocket costs.

A. Then I can give you no definite answer to your question. On the figures you have given me, of course, I recognize that the net at the mill of $1 is less than the figure of $1.25, but that is not necessarily the whole story.

Q. I believe you testified previously, Mr. Reiter, that your saw no way in which to determine whether you were making a profit or loss on a particular sale unless you compared the mill net with the cost?

4412 Examiner Norwood: The objection is overruled. Let him answer that. Is that a fact?

4413 The Witness: I believe that that was my testimony. And I think I should have more properly said the comparison of the total cost with the total net received.

By Mr. Wooden:

Q. In the case of the Universal Atlas Company do you sometimes take an order and then decide which mill you will ship it from of your chain?

A. Generally when the order is taken we know which mill we are to ship from. But there may be instances where we decide later.

Q. I assume you try to ship it from the mill that will give you the highest mill net?

A. Yes, sir.

Mr. Wooden: I am offering at this time, your Honor, a paper marked for identification as Exhibit 1024. It is a circular of June 11, 1930, to the members of the Board of Trustees of the Institute, over the name of the president, Mr. Blaine Smith.

A copy was obtained by Mr. MacIntyre.

I am offering it in the hope that further identification will be waived. I think it appears on its face to be an authentic document.

Mr. Leisure: Your Honor, there is no objection on the ground of the signature, but it is very remote, and I object to it on that ground. It goes back to June, 1930.

4414 I do not see the relevancy. At least, there has been no basis laid for the relevancy.

(COM. EX. 1024 was offered and received in evidence.)

Q. Showing you a paper marked 1025-A and B for identification, will you identify that as a letter received by you from Mr. W. S. Mallory, dated July 26, 1935?

A. Yes, sir.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: No objection.

(COM. EX. 1025-A and B was offered and received in evidence.)

Q. I now show you papers marked 1025-C to L, inclusive. Will you identify them as correspondence passing between you and the Marquette Cement Manufacturing Company, and between it and Mr. Mallory. (Handing documents to witness.)

A. (After examining documents.) Yes, sir.

4415 (COM. EX. 1025-C to L was offered and received in evidence.)

4418 Q. Did the objections of the Marquette Company to having its figures shown separately on the Institute's statistical reports,—were those followed by any resignation of the Marquette Company?

A. No.

Examiner Norwood: Did they make those reports thereafter?

The Witness: No, they did not, Your Honor.

4419 Q. I think it is indicated by the exhibits that you instructed the statistical bureau not to send the statistical reports to the Marquette Company on such matters that they did not contribute their own figures to, is that correct?

A. That is correct.

Q. Were the other reports, statistical reports, continued with the Marquette Company?

Mr. Zimmerman: Will you not specify what you mean by "other reports," or what others?

Examiner Norwood: Or any other reports.

Mr. Zimmerman: Yes.

By Mr. Wooden:

Q. Were any other statistical reports then furnished the Marquette Company after they no longer received these ones that they did not participate in?

A. Yes. All other such reports were sent them? These additional statistical reports were all based, if my recollection serves me properly, on figures at the U. S. Bureau of Mines.

4420 Q. None of the other statistical reports were based on company figures?

A. I believe not. But I would have to refresh my memory from a—

Q. (Interposing.) All right, sir. Showing you now papers marked 1025-M to P, inclusive, purporting to be copies of correspondence between the Institute and L. T. Sunderland, was Mr. Sunderland of the Ash Grove Company?

A. He was president of the Ash Grove Company, yes, sir.

Q. Will you identify those as authentic documents (handing documents)?

A. (Examining documents.) Yes, sir.

Mr. Wooden: I offer them in evidence.

(COM. EX. 1025-M to P was offered and received in evidence.)

Q. This Ash Grove case represented by these ex-
4421 hibits is very similar to that of the Marquette case we had a few minutes ago.

A. There were two separate items in the Marquette case. This is similar to one of the items in the Marquette case.

Q. Was it handled by the Institute the same way as in the Marquette case?

A. Yes, sir.

Q. Did the Ash Grove Company continue its membership in the Institute after this objection to the publication of its own figures in the statistics?

A. Yes, sir.

Mr. Leisure: May I ask the witness a question, your Honor?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Reiter, on Exhibit 204-J, there appears some writing on the side—"see labor statistics." Do you know anything about that? Is that your writing?

4422 The Witness: No, sir; that is not my writing and I don't know who wrote it.

(COM. EX. 204-N, M, L and J was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Reiter, referring again to the Marquette and Ash Grove cases, did the collecting and dissemination of the statistics to which they objected continue?

A. Yes, sir.

Q. Were there any other parties or any other com-

panies that dropped out the same way as Marquette and Ash Grove?

A. Yes, Mr. Wooden. I would like to amend my answer before this one in that the collection and dissemination of statistics on stocks, production and shipments con-
4423 tinued, and the collection and dissemination of information on contract filing was discontinued, as we mentioned.

Q. Yes, sir, you have already said that. Was the collection and dissemination of the figures on production, shipments and stocks on hand continued in the same way as previously?

A. Yes, sir.

Mr. Zimmerman: You mean is it still continued?

Mr. Wooden: Yes.

The Witness: Yes, sir.

By Mr. Wooden:

Q. Showing you Exhibit 204-N, Mr. Mallory's letter to you of October 9, 1935, (handing document to witness) the statement is made there, "that the Bureau of Labor figures with regard to cement prices were not fair to the industry." Will you explain wherein they were not?

A. (After examining document.) The Wholesale Price Division of the Bureau of Labor Statistics of the U. S. Department of Labor had for many years collected from six companies, I believe, information on changes in their so-called base prices at such mills. They were unfair in that they didn't properly average the conditions over the United States for which they attempted to report, and also because the figures used were not in fact prices.

Q. You mean because the base prices at the mills were not prices, and that has been your position hitherto, I believe?

4424 A. Yes, sir.

Q. But I believe you also said that each mill when selling on its own base, that it didn't get less than its base price?

A. Well, I don't think I said that,—

Q. (Interposing.) Is that true?

Mr. Zimmerman: No.

The Witness: (Continuing.) I believe it is true.

By Mr. Wooden:

Q. The burden of Mr. Mallory's objection here was that the prices published by the Bureau of Labor Statistics,

or the figures purporting to show wholesale prices were half than they would have been if they had been an average covering a wide area?

A. Yes, that is true.

Q. I am referring to 204-L, Mr. Mallory's letter to you of October 16, 1935, where he describes how he had the Bureau of Mines change its figures on production capacity by utilizing the three highest consecutive months' production. Did you ever see how much difference or figure out the difference it would have been made if an average had been taken rather than the three highest consecutive months of production?

A. No.

Mr. Wooden, I would like to say that I think Mr. Mallory is quite optimistic about his influence on the U. S. Bureau of Mines.

4425 I do know that the U. S. Bureau of Mines does figure capacities of plants in the cement industry in that manner. That seems to be as fair a manner of computation as can be consistently made throughout the country.

Q. Are not the three highest consecutive months' production on their face higher than an average showing; in other words, isn't it something that has been attained only quite rarely in three months?

A. I believe that the complete figure would show that some mills at least have attained an annual output equal to the capacity figured in that manner.

4426 There are retarding effects in the plant itself on the thing you have in mind. They take the three highest consecutive months. And over a three months period that would indicate at least the maximum capacity of that plant. Then there is no reason, if demand was sufficient, why they couldn't continue through the other twelve months, although I will admit that it is rarely done.

Q. You might say it is a theoretical maximum—

Mr. Zimmerman (interposing): I do not want to interrupt.

Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Was any change made in the Bureau of Labor
4427 figures on prices as they were following the correspondence here between you and Mr. Mallory?

A. It just happens I have had considerable to do with that, both when I was in the Cement Institute and since I have been with the Universal Atlas Company, and they now have out a tentative report which indicates a change in their method of reporting, which is being considered by their advisory committee.

Q. Still under consideration and no action yet?

A. No, it has not been adopted.

Q. Was that with a view to publishing average prices?

A. Mr. Wooden, their information is usually given in indexes, index figures, compared to 1926 as 100 per cent. And their information is widely distributed in newspapers, particularly in chart form.

And, therefore, I think it wise for us to be quite interested in the accuracy of their figures, which were grossly inaccurate before.

Q. My question was whether that was to cover average prices as distinguished from these mill base prices that had been used.

A. To answer your question as briefly as possible, their new plan takes the actual destination price at some 16 widely scattered cities in the United States, and subtracts from it constant factors, such as the cost of package 4428 and cash discount, and compares the remainder weighted by the amount of shipments in that area to previous years.

Q. It is the delivered price in that area then subject to the deductions that you have named?

A. That is right.

Q. Have you continued since leaving the Institute in any way to handle industry problems such as you handled while with the Institute?

A. No, Mr. Wooden.

Q. Your entire time has been centered upon the affairs of the Universal Atlas Company?

A. Yes, sir.

Q. And in no sense have you continued to act as a medium of exchange of information between it and other companies?

A. I have not acted in that capacity at all.

Q. Are you familiar with a committee that existed in Districts 1 and 2 that was called a committee on reconciliation of cement statistics?

A. Yes, I remember there was such a committee because I saw a copy of its report.

Q. What were its functions?

A. Most of the members of the industry reported their shipment figures to three different places; first, the United States Bureau of Mines; second, the Cement Institute and, third, the Portland Cement Association. The first
4429 was reported for statistical purposes of the Bureau of Mines and the other two were reported for the purpose of assessing dues.

Now, the report forms on which these three reports were made were widely different and this committee proposed to suggest a single form which might be run through the typewriter once and copies sent to these three persons and save work and possibly errors in the offices of the Cement companies.

Q. In all three cases—the Bureau of Mines, the Institute and the Portland Cement Association—I understand the shipments by States were reported. Is that right?

A. Yes, sir.

Q. Were those figures on shipments by States the figures that needed to be reconciled?

A. I do not understand what you mean by your question.

Q. Well, this is a committee on reconciliation of statistics and I am asking you if that reconciliation needed to be made on shipments between States?

A. I understand it to be a reconciliation of forms and not figures, Mr. Wooden.

Q. Perhaps I am in error. You do not know of any reconciliation of figures?

A. No, and so far as I know that was not considered by that Committee.

4430 Q. Was there some activity of the committee with regard to shipments reported by the various mills as shipped for other manufacturers?

A. Yes, sir.

Q. And shipped by other manufacturers for other mills?

A. Yes, sir.

Q. How much of a factor has that been in the industry, of one mill shipping for another?

A. I do not know, Mr. Wooden. I never saw such figures as collected by our own statistical bureau, but there was some shipping, and I would describe it as minor.

Q. How does it come about that one mill will ship for another?

A. Well, it would come about for a variety of reasons. I described one or two, I believe, in my previous testimony, which happened under the Code and which came to my attention because of the price for the sale of cement from one manufacturer to another, which was filed with the Code Authority.

Q. Have there been any shipments, as far as you know, by one mill for another in order to make the most economical delivery and economical delivery charge?

A. Yes, sir; I think that is true.

Q. You mean by that that if a mill located at quite a distance, say, from the delivery point, could make a
4431 mill that was located nearer the delivery point, deliver for it—

A. That has happened from my own information—the two cases that I cited under the Code days would have that effect and I presume that is the reason they were handled in the manner that they were.

Q. When that is done, does the mill that does the shipping use the bags of the other mill for which it does the shipping?

A. I do not know, in these cases I have in mind, whether that was done or not.

Examiner Norwood: Was it done in any other cases?

The Witness: I do not know whether it is done or not.

By Mr. Wooden:

Q. Were not such cases one of the things that the Committee on Reconciliation of cement statistics dealt with?

A. So far as I know not at all. I would like to amend an answer I have given you, if I may.

Examiner Norwood: Certainly.

A. Because I have just thought of other instances of one cement company shipping for another, and in those cases I believe that shipment was made in the sacks of the company who had the order and that was in the case of a strike at the mill for which the shipment was made.

By Mr. Wooden:

4432 Q. I am showing you, for the purpose of possibly refreshing your recollection, a report of the Committee on Reconciliation of Cement Statistics. Is that the re-

port which you said that you had seen. (handing paper to witness)?

A. It appears to be. I do not see any signature of the committee on it and I do not know whether that was on the copy I saw or not.

Q. That seems to have been forwarded with this circular here (indicating).

A. Yes, I am sure this is it.

Q. Now, referring to the first page of the report, do you see some references there to shipments made for other mills and how they should be reported?

4433 Mr. Leisure: Are you going to offer that, Mr. Wooden?

Mr. Wooden: I hope not, but I have no objection to doing it. It is for the purpose of refreshing his recollection.

Mr. Leisure: If it is for the purpose of refreshing his recollection on something he did himself, I have not objection, but if it is showing him a paper and asking him to talk about it, which is apparently the purpose of it, I object to it.

Examiner Norwood: Counsel's point is well taken.

Mr. Wooden: The report of the committee on reconciliation of cement statistics and the circular distributing it to the members of the Northeastern Division, dated February 28, 1936, have been numbered for identification 1026-A to F, inclusive, and I will offer them at this time, your Honor. (Handing papers to Mr. Leisure.)

Mr. Leisure: May I ask the witness a question, your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Reiter, I show you the exhibits that have just been offered in evidence and ask you if that is the report you described a moment ago when Mr. Wooden asked

4434 you if you had seen such a report? (Handing documents to witness.) Will you just look at that and see if that is the report that you saw, or a copy of it?

Mr. Wooden: He has already said that that was.

The Witness: (After examining documents) Yes, sir. This is not a part of that report. (Indicating a document.)

By Mr. Leisure:

Q. Is that a transmittal letter, or something of that kind?

A. No, this is not a transmittal letter. (Indicating.)

Mr. Leisure: Were you offering that—I am referring now to 1026-F—with the report, Mr. Wooden?

Mr. Wooden: No, if it is not a part of the report I do not want it.

The Witness: No; it is something else.

Mr. Wooden: It just got attached to it by mistake.

Mr. Leisure: Your Honor, this material as to Exhibit 1026-A to E still refers to statistical material.

Examiner Norwood: Yes.

Mr. Leisure: And has not been described in the complaint, and we object because no proper basis has been laid for it in evidence.

Mr. Wooden: I should like to cancel the offer of
4435 1026-F.

Examiner Norwood: They are received as Exhibit 1026-A to E, the F being withdrawn.

(COM. EX. 1026-A to E was offered and received in evidence.)

4436 Examiner Norwood: The hearing will come to order.

I have a letter here from Mr. G. T. Lemmon, from the Department of Highways, Commonwealth of Virginia, acknowledging receipt of those original bids filed for 1936 and 1937, and stating that one number, number 1164, dated June 14, 1937, with list of delivery points, is missing from those files. And I find that those particular papers were received in evidence, that is the originals were received. I suppose that it may be agreed that a photostat copy may be inserted and the originals delivered to me to be returned to Mr. Lemmon?

Mr. Wooden: Yes, your Honor, we will be glad to do that.

Examiner Norwood: You have the number there?

Mr. Wooden: I have the number of it.

Examiner Norwood: What is the number of it?

Mr. Wooden: 155-A to E.

Examiner Norwood: It is exhibit 155-A to E.

Then I have found this missing package of papers, sent to me under the subpoena to Universal Atlas Cement Company, or to one of the officials. I had safely locked it up in my desk, and found it yesterday.

4437 This package consists of a letter of transmittal, dated February 28, 1938, and signed by Mr. John H.

Hershberger, counsel for Universal Atlas, and 32 photostatic copies of papers as described.

These may be marked for identification 1027-A to GG.

(The documents referred to were marked "Commission's Exhibit 1027-A to GG for identification.")

Mr. Hershberger: May I assume, your Honor, that the same objections that we have stated to the other papers will apply?

Examiner Norwood: The same objections and exceptions in the case of all the other papers received in compliance with the subpoenas.

Go ahead.

GEORGE H. REITER, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Reiter, was there any committee on reconciliation of statistics in divisions other than districts 1 and 2?

A. No, sir.

Q. Can you explain why it was thought necessary to have one in those districts and not in others?

A. No. Mr. Wooden, I believe that the idea just
4438 occurred to some people in districts 1 and 2, and they appointed a committee there.

And necessarily what they proposed or suggested applied to more than districts 1 and 2, which is how I was particularly advised about it, or why I was particularly advised about it.

Q. Do you recall any instances in the Middle West where figures reported by companies to the Bureau of Mines of their shipments into various States differed from those reported to the Institute?

A. No, and if they did differ I probably would not notice it for the reason that I, myself was not handling the figures reported to the Statistical Bureau, the Statistical Bureau being in New York, and I saw that report and the report of the Bureau of Mines at different times and, to my knowledge, they never compared them.

Q. I thought it might have come to your attention. That is all I meant.

A. No, sir.

Q. What have been the activities of the Institute with reference to the matter of proposed establishment of new plants in the industry?

A. The N. R. A. Code provided that, I believe, the Board of Trustees of the Cement Institute should or might prepare a petition to the President concerning the increase in productive capacity and several of those petitions
4439 were prepared and got as far as the Deputy Administrator in charge of our Code.

Now, I believe that in one instance, after the date of the Schechter decision, the President of the Cement Institute followed through with a similar protest. This protest—or these protests—were in the nature of giving statistics on consumption of cement in the past in the territory which would be served by the new mill and the capacity of plants already serving that territory.

Q. To whom were the protests made?

A. Under the Code provisions, if my memory serves me correctly, they were to be made to the President of the United States, but the route they took was through the Deputy Administrator of the Code.

Q. Since the N. R. A. Code, to whom were protests made?

A. The one to which I referred, I believe, went to the Administrator of R. F. C.

Q. You mean Chairman Jones of the Reconstruction Finance Corporation?

A. I think so; yes, sir.

Q. What was the one case you referred to?

A. The case to which I referred was in connection with a loan to—I forget the name of the company, but it was a mill proposed in the State of Idaho.

Q. Is that the Washington-Idaho Lime Products Company?

4440 A. Yes, sir.

Q. You are sure, however, there was not more than one case?

A. I am not entirely sure.

Q. I show you papers marked for identification 1028-A to F, inclusive, being copies of correspondence between the Institute and Chairman Jones and the Nazareth Cement Company and the Washington manager of the Portland Cement Association. Will you identify those papers as authentic documents relating to the case of the Washing-

ton-Idaho Lime Products Company (handing papers to witness)?

A. (After examining papers): Now, may I have the question?

Examiner Norwood: Read the question.

(The reporter read the question.)

A. 1028-C is a photostat of a copy of a letter addressed to Chairman Jesse H. Jones, but is not a copy of a letter of the Cement Institute.

By Mr. Wooden:

Q. Does it appear whose it is?

A. No; and I see no reference to it here. It is typewritten, with no fill-in for the blank president.

And these papers also have some reference to a proposed or actual loan to the American Portland Cement Company of Arkansas.

Mr. Wooden; I offer them in evidence.

4449 (COM. EX. 1028-A to G was offered and received in evidence.)

Q. Was the Washington-Idaho Lime Products Company ever established?

A. Oh, yes.

Q. Has it been in operation?

A. Oh, yes.

Q. Where is it located?

A. Orofina, Idaho.

Q. How did the Portland Cement Association official, the Washington manager, get into the picture regard-

4450 ing this Washington-Idaho Lime Products Company and the proposed loan to it?

A. Some employee or official of the R. F. C. came to his office and sought information on capacities and shipments in the area around that proposed location.

Q. Did the Washington-Idaho Lime Products Company come into the Institute as a member?

A. No, they are not a member of the Institute, and have not been.

Q. Was the construction financed through an R. F. C. loan, or was the loan granted, do you know?

A. I don't know whether or not the loan was granted, but the construction was under way at the time the loan was requested.

Q. It didn't depend entirely upon the granting of the loan then whether this mill should be built?

A. Well, no. The mill was under construction.

It is a very small mill, the smallest in the United States, and built in a very inexpensive way.

Q. Do you remember the case of the Hartshorn-Oklahoma Mill that was proposed to be revived?

A. The only thing I know about that is that an article appeared in some local newspaper down there, which indicated that its revival was contemplated, and it turned out to be a false rumor.

4451 Mr. Wooden: I offer at this time, Your Honor, papers previously identified and numbered as follows: 197-Y, 197-Z, V, W, X, P, Q, E, B and A.

4452 Q. First, let me ask you, Mr. Reiter, what was the Cement Information Bureau that Mr. John B. Reynolds was manager of?

A. It was an activity of the Cement Institute.

Q. What was its function?

A. Its function was to collect and disseminate information on the cement business to its own members and to others.

Q. Who were its own members that you refer to?

A. I mean the members of the Cement Institute.

Q. What kind of information did it deal in?

A. Oh, many different matters. It might collect and disseminate any information that pertained to cement or its use. This information, by the way, was secured through a clipping service, newspaper clipping services, which formed the original basis for its information.

Q. Did it collaborate with the Committee on Public Relations?

A. I believe that the Committee on Public Relations was the original name of the committee who sponsored the Cement Information Bureau.

And I think that committee's name was changed to the Cement Information Committee at that time.

Q. I wish you would give us some more detailed
4453 description of the kind of activities the Cement Information Bureau engaged in.

A. As I have said, this Cement Information Bureau collected news items and statistics, the statistical information on cement, or building prospects, matters of that kind, which might be of interest to the industry, and through releases sent out this information to members of the industry.

They also cooperated with various committees of the ce-

ment industry in preparing reports, particularly a rather exhaustive report on labor relations, which they prepared for the Labor Committee.

Q. Did the Cement Information Bureau keep in touch with the public attitude toward the cement industry?

A. Yes, sir.

Q. Did it have anything to do with publishing advertising setting forth the position of the industry with regard to matters of public criticism?

A. Yes. They had charge of the publication, in 1934, of a series of eight advertisements which were published in Time magazine and several other magazines.

Q. Were those advertisements arguments in defense of the basing point system?

4455 Examiner Norwood: I will sustain the objection to that and I will ask if they related to the basing point system.

Mr. Zimmerman: I maintain that the witness should have the advertisements here and counsel says he can produce them and there is no reason why he should be stubborn about it.

The Witness: I have seen those advertisements several times but I cannot say whether or not they related to 4456 the basing point system. They do present the industry's position of their marketing practice, but whether or not they relate to the so-called basing point system, I do not remember.

4457 Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Reiter, I show you Exhibit 197-W and 197-H, being a memorandum with some names on it and ask you if you know what it is?

A. Yes—

Q. (Interposing.) Where it came from or who wrote it.

A. I do not know who wrote it, but here is—

Q. (Interposing.) I can read it. Did you write it or do you know who wrote it?

A. I have two words in here in longhand of my own, but that is all I know about it.

Q. Does that serve to identify it—your writing?

A. I recognize my own writing to that extent.

4458 Mr. Wooden: It is attached to one of the letters, I believe.

By Mr. Leisure:

Q. Suppose you look at the letter and see if you can identify it, so we can tell what it is (handing letter to witness).

A. (Examining letter.) It appears to be a copy of a mailing list to which the letter marked 197-V was sent.

Q. And 197-V was addressed to whom?

A. To these people all listed there, and they are duplicated from this (indicating).

By Mr. Wooden:

Q. Perhaps we can dispense with the duplicate list then, if they are the same. I had not checked that to see.

A. I had not checked clear through, but so far as I went they are the same.

Mr. Wooden: I will be glad to withdraw W and X from the papers offered.

Examiner Norwood: Yes. Mark out W and X.

Mr. Leisure: As to the rest of the exhibits, Your Honor, we have already objected that the subject-matter is not within the complaint, and it is therefore incompetent, irrelevant and immaterial.

4460 Mr. Wooden: I call attention of Your Honor to the fact that Mr. Reynolds in 197-V sent the clipping around to the various people for their attention.

Examiner Norwood: In view of that I do not see why it may not be received for the special purpose indicated there, and not to prove the truth of its contents.

Mr. Wooden: Yes, I had no thought of that.

Examiner Norwood: Then let Z be received as indicated.

(COM. EX. 197-A, B, E, P, Q, Y and Z was offered and received in evidence.)

By Mr. Wooden:

Q. Was this Hartshorne, Oklahoma, plant, or, as I understand it, first, it was a plant that had formerly operated and then been shut down for a good many years?

A. I believe it operated briefly many years ago.

Q. Was it put back into operation in recent years so far as you know?

A. No, sir.

Q. I now show you papers marked 1029-A to G, in-

4461 clusive. Will you identify them as authentic com-

munications of the Institute regarding the plant at Foreman, Arkansas, I believe, the American Portland Cement Company (handing documents to witness)?

A. (Examining documents): Yes, sir.

Mr. Wooden: I offer them in evidence.

4462 (COM. EX. 1029-A to G was offered and received in evidence.)

Q. Was the plant at Foreman, Arkansas, of the American Portland Cement Company built and put into operation?

A. No, sir.

Q. I note, according to one of the letters in the exhibit 1029-G, that the R. F. C. was reported to have granted a loan in the amount of $50,000.

A. That is right.

Q. Do you know whether or not the loan was actually ever accepted and used in any way or how was it that the plant never got into operation?

A. Well, I could never understand that myself. The original amount of the loan requested of the R. F. C. was $300,000, and that was supposed to have been earmarked for them. Well, that would have been entirely inadequate to do anything to complete this plant which was started some years before and I could never understand what they did with the $50,000, but since that time even the lo-
4463 cation of the plant has been sold according to my information.

Q. Was that a small plant at Foreman, Arkansas?

A. It never operated, Mr. Wooden. It was a promotion proposition, as a good many of them have been.

Q. I mean would it have been a large plant as it was proposed, or just a small one like the one in Idaho?

A. No. While I do not know what size it would have been if their original plans went through, the one in Idaho was an unusually small one, its capacity being 250 barrels per day.

4464 Q. Was that one built to serve any special purpose, or to supply the general market?

A. No. It was a venture of a man, or a group of men, in and around Spokane.

Q. To supply the general market?

A. Yes, sir.

Q. Did the Institute or the Cement Information Bureau do anything in these cases like the Idaho case and the

Oklahoma case and the Arkansas case, other than object to the making of loans by the R. F. C.?

A. No, sir. Other than sending copies of such information as they had to members of the industry.

Q. Was local publicity in opposition to the building of these plants indulged in by any members of the industry?

A. It wasn't by the Cement Institute. I don't know whether it was or not by any member of the industry.

Q. Did the Cement Information Bureau supply members of the Industry with publicity that might be used in opposition to these new plants?

A. Yes, sir, of the nature as indicated by these exhibits.

Q. Were articles for publication or editorials for newspaper use prepared by the Cement Institute or Information Bureau in that connection?

A. I don't know whether they were or not, Mr. Wooden. I don't recollect any.

4465 Q. Are you familiar with the situation arising from the sale of high silica cement on the Pacific Coast?

A. I don't know what situation you mean.

Q. First, let me ask you what is high silica cement?

A. I am not a chemist, but it refers to the higher silica content of cement than is contained in Portland cement.

Q. Is that a higher quality of cement in some respects?

A. In my opinion it is not.

Q. Is it claimed to be some?

A. At least one kind of high silica cement is manufactured under a royalty, and I presume that the owners of that right believe it has some distinct advantage.

One advantage claimed for it is that it can profitably be sold at less money than Portland cement. I don't know whether or not that is true.

Q. Because of cheaper cost of production or what?

A. Oh, I don't know, Mr. Wooden.

Q. I am showing you a paper marked 1030 for identification, a copy of a letter from John J. Porter, of the North American Cement Corporation, to Mr. Rader, Chairman of the Code Authority, of December 9, 1933. Will you look at it (handing document to the witness)?

A. (Examining document.) I am not familiar with this letter.

Q. Has the high silica cement been produced and
4466 sold in the eastern part of the country?

A. I believe it has, but I don't know by whom or to what extent.

Q. Do you know anything about any arrangement for the production of such cement by Allentown?

A. No, I do not, Mr. Wooden.

Q. Referring to your statement about the high silica cement being sold for a less price than the standard, did that occur on the Pacific Coast?

The Witness: As a matter of fact, Mr. Wooden, I do not recollect if I ever knew what the price of silica—high silica cement—was in comparison with standard port-
4467 land cement in any market.

By Mr. Wooden:

Q. Did you know of any competitive troubles anywhere in the country because of the competition of high silica cement?

A. I am not familiar with any troubles that occurred because of the manufacture of that cement. I know that two companies manufactured it rather extensively in the vicinity of San Francisco.

Q. Do you know who they were?

A. One was the Pacific Portland Cement Company and the other one, I believe, was Santa Cruz.

Q. They were also making the standard portland cement?

A. That is right.

Q. You do not know any companies in the East that have made both?

A. No, I do not.

4468 Q. Did the Cement Information Bureau or any other part of the Institute put out publicity in opposition to State-owned cement plants?

A. Yes, sir. In the form of information as to what had happened in other State-owned cement plants.

Q. Was that distributed in such way as to have publicity given to it in other localities where proposals for State-owned plants were made?

4469 A. The publicity consisted of a story of what happened in the case of State-owned plants and was distributed, first, to the members of our industry in such quantity as they wanted, so far as I know never resulted in any newspaper advertisement nor article based on the information furnished by the Cement Information Bureau.

Q. When you referred to the distribution or description of what happened did you mean the history and the results of the State-owned plants?

A. That is what I meant, Mr. Wooden.

Q. As I understand it there were State-owned
4470 plants in South Dakota?

A. Yes.

Q. And was there one at one time in Michigan?

A. Yes.

Q. And what other States?

A. There was a municipally owned plant in Southern California.

Q. Owned by what—Los Angeles?

A. I believe it was either owned by the City of Los Angeles, or some water district out there.

Q. In what States were State-owned plants projected and not built?

A. In practically all State at the time the Legislatures convened.

4471 Q. Did the industry, through the Institute, file objections to the establishment of a government-owned plant in Puerto Rico?

A. Yes, sir.

Q. The plant, nevertheless, was constructed?

A. Yes, sir—that is, it is under construction at the present time.

Q. What was the interest of the industry in objecting to the plant in Puerto Rico? Did it ship into Puerto Rico from this country?

A. Yes, sir. It had another interest too, which I think is evident: Several members of the industry had investigated the possibility of a plant in Puerto Rico and had made rather complete surveys, on the basis of which they felt it was unwise to invest—an impossible proposition. If it was impossible, commercially, it looked like a bad expenditure of taxpayers' money.

Q. Did the Cement Information Bureau collect
4472 and distribute news articles and editorials which appeared in various papers in opposition to State-owned plants?

A. Well, they collected articles. How widely they distributed them, I do not know.

Q. Did they assist or encourage the preparation or publication of such articles?

A. I do not know that. If they did, it probably consisted of sending information which they had collected from such sources to special newspaper writers and special writers for magazines.

Q. Were steps taken to syndicate the publication of such items and articles? By syndicating, I mean to say that it would appear in a large number of papers taking the service of the special writers.

A. You mean that steps taken to syndicate by the Cement Institute—

Q. (Interposing.) The Cement Information Bureau, to make special arrangements with special writers that it would be syndicated?

A. Only that they occasionally sent to a mailing list of special writers some releases which they had.

4476 Washington, D. C.
Friday, March 18, 1938.

4478 GEORGE H. REITER was recalled as a witness for the Commission and testified further as follows:

Direct Examination (Resumed).

The Witness: Mr. Wooden, before you start, I would like to say that this morning I read a copy of the transcript of my testimony yesterday morning in re-
4479 sponse to your question regarding accounting and I think it is evident from the transcript that, unintentionally, while I had gross mill return in mind, I persisted in at least two places in calling it net and net return, so far as cement is concerned, to me, at the mill is the sale price less freight, package and discount.

By Mr. Wooden:

Q. And do you compare your mill nets with your cost, in order to determine whether you are making or losing on those sales?

A. With the total cost, yes, Mr. Wooden.

Mr. Wooden: Your Honor, I wish to offer for the record at this time papers previously identified and numbered as 210-L, M and N, and 210-H and I, 276-A, B, C, and D, 210-G, 323—

Examiner Norwood: (Interposing.) Wait a minute, what is 323?

Mr. Wooden: This is just the one sheet.

Examiner Norwood: Go ahead.

Mr. Wooden: 210-E and F; 210-D and 210-C.

Examiner Norwood: All right.

Mr. Wooden: They consist largely of filings pertaining to so-called port arbitraries and the date is 1935, most of it subsequent to the Code,—some prior thereto.

4480 Examiner Norwood: 210 was identified by Mr. C. A. Giblin; 276 by Mr. E. B. Widman, and 323 by Mr. B. P. Brown—this is on January 1th—all of them.

Is there any objection to the proffers?

Mr. Leisure: Yes, your Honor, as to the group of exhibits that have now been offered, I make the specific objection, as far as 276-A and B for identification, appears to be a mere inter-office memorandum or letter.

Mr. Wooden: That is from Mr. Neylan's file, I believe.

Mr. Leisure: It is incompetent, irrelevant and immaterial, it seems to me. As to Exhibit 210-L, 210-M and 210-N, this is a communication with the Code Authority, neither party being a respondent in this case—it is during the Code period, and we make our same objection to that type of evidence as being incompetent, irrelevant and immaterial.

Examiner Norwood: Let me see the five exhibits.

Mr. Leisure: This is 276-A and B.

Examiner Norwood: Yes.

What is this 276-A and B, Mr. Wooden?

Mr. Wooden: It is from Mr. Neylan, a member of the Trade Practice Committee at the time, writing to the vice president of his company in charge of metropolitan sales, relating to putting in of a so-called arbitrary price

4481 in Brooklyn to meet foreign cement competition. It is related to some of these other papers here that show filing of the same sort with the Trade Practice Committee.

(Discussion off the record.)

Examiner Norwood: 210-L, M and N appear to contain information relative to the Code Authority. It is a letter signed by this witness.

(COM. EX. 210-L, M and N; 210-H and I; 276-A, B, C and D; 210-G; 323; 210-E and F and 210-C and D" were offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Reiter, was it the custom, in filing so-called port arbitrary prices, to notify the members as to the identity of the concern or concerns which had filed such prices?

A. That was not the custom in filing any prices unless some unusual condition occurred which made that necessary.

Q. It was merely reported to the members that such price had been filed without naming the party that filed it?

4482 A. Yes, sir.

Q. Referring to 210-L, M and N, they cover prices for certain destinations in New Jersey and one in New York. Are those all port prices?

A. So that I may be sure that I understand what you mean, they were prices filed f. o. b. barge, alongside dock for water delivery at those destinations named.

Q. Were those special prices to meet foreign competition in the vicinity of those destinations?

A. That I do not know unless it says here in the file.

Q. No, it does not say. That is the reason I asked you.

A. Then I do not know.

Examiner Norwood: Did it cover the territory in which there was foreign competition?—those prices that obtained in that territory?

The Witness: That is one of the areas in which foreign cement has always been competitive.

Examiner Norwood: And they were confined to that territory, were they not?

The Witness: Well, they covered a territory where there was competition of foreign cement.

4483 Q. Looking at the destination prices of 210-M, can you say from the prices themselves whether they were lower than the prices normally would be, figured on a full rail base from interior points?

A. I do not recollect the previous price on file of these destinations, Mr. Wooden.

Q. There is nothing on the face of that which would enable you to state whether they were specifically to meet foreign competition?

A. No, sir.

Q. What company was it that took the lead in filing special prices in Brooklyn under date of July 6, 1935, as indicated by these exhibits?

A. Well, I do not remember and this would not indicate; if this was a photostat of our file copy in the Cement Institute, it would indicate by a check mark against the name of the company shown at the heading of the

letter, but this having come from another file, has no indication who filed it.

Q. And you have no recollection on the subject, have you?

A. I have no recollection.

Q. It appears from these exhibits that a special price was put in in Brooklyn to meet foreign competition in July, 1935, and withdrawn in December, 1935.

4485 Examiner Norwood: Does that appear from the exhibit?

The Witness: This later letter to members of the industry, dated July 11, 1935, says that "Our letter of July 6th states that a filing was made f. o. b. buyers' trucks, Brooklyn, stated to meet foreign competition." Now, what was the other date?

By Mr. Wooden:

Q. Was that special filing withdrawn in December, 1935?

A. That is true as indicated by our letter to the members of the industry dated December 3, 1935.

Q. Can you tell me any of the circumstances or reasons which led to the withdrawal of that special filing in December, 1935?

A. No, Mr. Wooden, I cannot.

Q. Was the special price filed $1.82?

A. $1.82 per barrel, paper sacks, f. o. b. buyers' trucks, alongside dock, foot of 20th Street, Brooklyn, New York.

Q. How much, approximately, was that figure below the regular destination price, if it had been gotten according to the usual manner, without regard to meeting foreign competition?

A. Mr. Wooden, I do not know.

4486 By Mr. Wooden:

Q. Do you know what the price was after the $1.82 was withdrawn? Does that show?

A. No, sir.

4487 Q. Are these special port prices to meet foreign competition sometimes referred to as arbitraries?

A. Well, I do not so refer to them myself, Mr. Wooden.

Q. Have you heard them so referred to in the industry?

A. Yes, I have.

Examiner Norwood: Are they arbitraries?

The Witness: I would say that they are special prices. I do not know what is entailed by the word "arbitrary", Your Honor.

By Mr. Wooden:

Q. In what sense are they special prices?

A. They are not the sum of the known so-called base price plus freight to that destination.

4488 Mr. Wooden: I want to get an idea of the range of the differences between those so-called special prices and the prices calculated according to the description of the base plus freight.

Examiner Norwood: The objection is overruled. I will ask the witness to answer from his own knowledge as to the general averages—.

Mr. Wooden: Or range.

Examiner Norwood: Yes—or range.

Mr. Leisure: May I know whether that question 4489 covers all the companies in the United States or his own company or what the general range of prices is that is covered?

Examiner Norwood: He can state that.

Mr. Leisure: I think I should ask a question to know. I do not know what the witness will state.

Mr. Wooden: I will be glad to limit it to the eastern seaboard for the time being.

Mr. Leisure: What companies are involved and what period of time, whether before the Code, during the Code or when?

Examiner Norwood: He may answer that.

The Witness: The answer is that I do not know, Mr. Wooden.

Examiner Norwood: Could you give us a few of those prices which would indicate the differences?

The Witness: No, sir; I do not have any figures in mind.

By Mr. Wooden:

Q. Has there been any special price in the metropolitan district of New York since you have been with the Universal Atlas Company?

A. Yes, sir.

Q. How do those special prices of Universal Atlas compare with the regular prices, if you figured them 4490 according to the method you have outlined before?

A. Mr. Wooden, it may seem strange to you, but

I make no attempt to carry those prices in my mind. Bear in mind that the company I am with covers some 37 States and it would be like remembering telephone numbers throughout all that area.

Q. You have a special man that takes care of that sort of thing?

A. In various places.

4491 Q. Are there any special prices to meet foreign competition on the Pacific Coast?

A. That I do not know.

Q. Are there any special prices to meet foreign competition at gulf ports?

A. Yes, there are some so-called base prices at ports of entry for the foreign cement.

Q. What ports are those?

A. I could not remember without a map.

Q. Can you name some of them?

A. Well, Port Saint Joe.

Q. Where is that, in Florida?

A. In Florida; Mobile—there are others, but that is all I remember.

Q. Is New Orleans one?

A. New Orleans is not one.

Q. Pensacola?

A. Pensacola.

Q. Gulfport?

A. No.

Q. Any Texas ports?

A. No Texas ports.

Q. Without knowing the exact or even approximate amount of differences between these special prices and the prices figured according to the method you referred

4492 to, you do know that the special prices are lower than the others?

A. Yes, that is true.

Q. And in a somewhat substantial degree?

The Witness: I do not think I can answer that question because I do not know what is meant by "substantial."

By Mr. Wooden:

Q. I would be willing to leave that to you and I will make an attempt to define it a little more, depending on your answer.

A. Not knowing the amount, I do not see how
4493 I can answer that question.

Q. In your observation and conduct of the Trade Practice Committee filing, with regard to special prices to meet foreign competition, did you find that the special prices filed by different concerns with the committee became identical, just like the prices filed for other destinations?

A. Generally it was so, as it was generally so with any price filed.

Q. Do you know of many cases where the special prices to meet foreign competition were lower than the foreign price,—the price of the foreign cement?

A. Well, the reason I cannot answer that is that I do not know what the price of the foreign cement was—that was not filed with us.

Q. Referring to this matter of the change in the price statistics of the Bureau of Labor Statistics, which you touched on yesterday, does that contemplate using some of these special prices to meet foreign competition?

A. It contemplates using prices at these sixteen or more destinations throughout the United States, which they have selected as giving a representative picture of the price conditions in the country; most of these destinations are, of course, inland, and two or three of them I believe are on the seaboard, so in a measure they will reflect properly the port prices as well as the interior prices.

4496 Mr. Wooden: I am showing you now, Mr. Reiter, papers marked for identification 1032-C to F, inclusive. Will you identify them as a photograph of an original letter addressed to you by Mr. Affleck, Chairman of the Cement Information Committee?

The Witness: Yes, sir.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

4497 (COM. EX. 1032-C to F, inclusive, was offered and received in evidence.)

Q. Showing you, Mr. Reiter, papers marked for identification 1032-G to Q, inclusive, will you identify them as circulars issued by the Institute, and in some cases enclosing other material?

A. Yes, sir.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure: Your Honor, as to the exhibits that have just been offered, we have no objection to 1032-G,
4498 being a letter to Mr. Reiter's.

As to the other three exhibits, 1032-I is a public speech made by a gentleman by the name of Young, who is connected with one of the respondents. Surely the respondents in this case are not bound by public speeches made and later copied and offered in evidence.

1032-H is a newspaper clipping; I hope we are not bound by newspaper clippings.

1032-P is a copy of a newspaper article from the Business Week and that is being offered.

Now, clearly all of these are incompetent, irrelevant and immaterial and no proper basis has been laid. It would have to be shown that those things were done as the result of the activities of this committee before they could even be remotely connected with this case.

Mr. Wooden: Your Honor, as to the public speech of Mr. Young, representing one of the leading respondent companies, the Institute thought well enough of it to circulate it to all members of the Institute under date of May 4, 1936.

Examiner Norwood: Is that one of the other exhibits?

Mr. Wooden: That is the first one that he spoke of. Of course, it is my contention and position that any statements made at any time, whether oral or written
4499 by respondent representatives is admissible; it is a mixture of self-serving declarations and admissions, but nevertheless I decided I would offer it, just the same I felt the admissions were more important than the other.

4501 Examiner Norwood: It shows the result of the activities of the Cement Institute. I think it should come in.

Mr. Leisure: There has been no basis of that kind laid, showing that.

Mr. Wooden: I think that Mr. Young, who made the speech, was on the same committee that was dealing with Professors Clark and Burns in regard to the basing point system.

Examiner Norwood: It says that this article is based

on information compiled and prepared by the Information Bureau of the Cement Institute, personally presented to and discussed with Mr. Forbes. Objection overruled.

Mr. Wooden: As to this other one—

4502 Examiner Norwood: I thought I had H and P in my hand.

Mr. Wooden: There is P (exhibiting). It is around here somewhere.

Examiner Norwood: I thought I had the two in my hand.

Mr. Wooden: There (exhibiting) is another circular over the signature of Mr. MacFarland.

Examiner Norwood: What is your objection to this P and Q?

Mr. Leisure: Was that offered at this time?

Mr. Wooden: Yes, and you made a specific objection to it, I think.

Mr. Leisure: That is the letter, I believe, that copies the newspaper article.

(COM. EX. 1032-G to Q was offered and received in evidence.)

By Mr. Wooden:

Q. Referring to 1032-P and Q, Mr. Reiter, was the editorial reproduced there from Business Week, the result of the cement information bureau's work as in the case of the Forbes' article?

4503 A. No, Mr. Wooden, it could not have been because of the date of the letter, which was prior to the formation of the Cement Information Bureau.

Q. Was it the product or result of any action by the Institute or based on information furnished by the Institute?

A. I have no knowledge of it and unless this letter states, I would not know.

Q. All right. I see there that Mr. MacFarland was president in 1933 of the Institute.

A. Yes, early in 1933.

Q. Can you give me the period covered by his presidency?

A. No, I can not exactly, but it seems to me that he became president sometime in 1931 and served until early in 1933.

4504 By Mr. Wooden:

Q. Was he succeeded by Mr. Coffin?

A. Yes, sir.
Q. Mr. G. F. Coffin?
A. Yes, sir.
Q. Was Mr. Coffin followed by Mr. Charles Conn?
A. No, he was not, Mr. Wooden.
Q. Who was the president following Mr. Coffin?
A. Who was the president following Mr. Conn?
Q. No, Mr. Coffin.
A. Mr. S. W. Storey.
Q. When did Mr. Storey become president?
A. He became president at the meeting in December, 1936.
Q. Is he still president?
A. He is still president.
Q. Was Mr. Charles Conn president at that time?
A. Yes, sir.
Q. During what period?
A. I am afraid I have given you some incorrect information. I believe that Mr. Conn followed Mr. MacFarland, and Mr. Coffin followed Mr. Conn as president.
Q. I am asking these questions on the basis of some information furnished me by Mr. MacIntyre, just to check and see if this is correct; he indicated Mr. MacFarland was president in 1931 and 1932, Mr. Coffin 1933, Mr. 4505 Conn 1934, 1935, and 1936, and then Mr. Storey.
A. No, sir, that is not right.
Q. Then, was Mr. L. G. McConnell president in 1930?
A. No, he was general manager.
Q. Who was the president?
A. The first president was Blaine S. Smith.
Q. How long did he serve?
A. He served until some time in 1931.
Q. Before leaving that subject that we had up a few minutes ago, I wanted to ask you whether the Institute made any arrangements for radio publicity?
A. Mr. Wooden, at the request of one member of the Board of Trustees, who brought up the possibility of radio publicity in a Board meeting, I investigated the cost of a radio program for publicity of the Cement Institute, and that was all that was done about it, except that I made the report of the cost to this member of the Board of Trustees, as requested.
Q. What was the plan aimed at which did not carry

through on the radio publicity—what was the purpose of the suggestion?

A. Well, I should say that this trustees's idea covered good will advertising or publicity.

Mr. Wooden: I am offering at this time, your Honor, papers marked for identification 1033-A, B, C, 4506 and D.

1033-A is a list of the membership of the Cement Institute; I do not see the date to which it is applicable.

1033-A and B is a list which was obtained recently by Mr. MacIntyre from the Institute files in Mr. Brick's possession. Somebody, before it was photographed, had written on a date, 11-23-33, however.

1033-C is a circular or copy of a circular of the Institute regarding membership.

1033-D is a list of members of the Institute at March 15, 1937, which as I understand it, was furnished by Mr. Reiter. I would be glad to have him and counsel check these over and see if they are acceptable without further identification.

Mr. Leisure: We have no objection to these, Your Honor, provided they are received with the understanding that we can make any corrections that should be made as to the membership and providing that we can correct the date if the dates that appear are not correct.

Examiner Norwood: Yes; they are received with that understanding.

(COM. EX. 1033-A, B, C, and D was offered and received in evidence.)

4507 Mr. Wooden: I offer at this time an exhibit previously identified and numbered 139-13, being a photographic copy of a letter from Mr. L. T. Letzkus to the Institute under date of February 14, 1930.

Mr. Leisure: As to the exhibit just offered—139-13, for identification—it is written by the sales manager of one company. I submit to Your Honor that until some conspiracy is shown, his letter in not binding on anyone save himself. It is not binding on the other respondents and we object to it at this time as incompetent, irrelevant and immaterial.

Examiner Norwood: It is received necessarily subject to that condition, is it not?

Mr. Leisure: And it can not be received now for the purpose of proving any such conspiracy.

(COM. EX. 139-M was offered and received in evidence.)

4509 Mr. Leisure: May I ask the witness a question on 1034-B?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Do you know who Mr. Henry C. Koch is; Mr. Reiter?

A. No, sir.

4511 At this time, your Honor, I offer a paper marked and previously identified as 202-V, being a copy of a letter from Mr. Reiter to Mr. McLean, the manager of the Institute at Kansas City, under date of June 15, 1936. Can you identify that, Mr. Reiter?

The Witness: Yes, sir; I remember the letter.

Mr. Wooden: I have already made the offer. (Handing paper to Mr. Leisure.)

Examiner Norwood: Any objection?

Mr. Leisure: No; we have no objection, your Honor.

Examiner Norwood: Received as marked.

(COM. EX. 202-V was offered and received in evidence.)

By Mr. Wooden:

Q. Show you papers marked 1035-A and B for identification, Mr. Reiter, will you identify them as a letter received by you, with the copy enclosed therewith, in January, 1936?

A. Yes, sir.

4512 Mr. Wooden: I offer them in evidence. (Handing papers to Mr. Leisure.)

Mr. Leisure: (After examining papers.) No objection.

(COM. EX. 1035-A and B was offered and received in evidence.)

4513 By Mr. Leisure:

Q. Do you know, Mr. Reiter, whether the Code of Ethics—the paper which I now show you, which purports to be a Code of Ethics, was ever executed? I notice the last page is unexecuted. Do you know whether it was ever used and whether that is it?

A. I am not familiar with it. It is headed "Organization" and it pertains to the Kansas City Cement Bureau which was not a part of the Cement Institute.

Examiner Norwood: It is not the Code of the Institute?

The Witness: No sir—well, I am very sure that it is not. I would have to compare it with the code of the Cement Institute, but the heading does not indicate
4514 that it is, Your Honor.
4515 By Mr. Wooden:

Q. Did the Kansas City Cement Bureau operate during the time that the Institute operated?

A. Well, if at all, for only a short period of time.

Q. Was the Kansas City Cement Bureau followed by the Kansas City Division of the Institute?

4516 The Witness: The Kansas City Cement Bureau was in existence before the formation of the Cement Institute.

Mr. Wooden: That is a partial answer, I believe.

(Discussion off the record.)

By Mr. Wooden:

Q. Did the Kansas City Division of the Institute succeed to any of the functions of the Kansas City Cement Bureau?

A. I can not answer that, Mr. Wooden, because I am not familiar with the functions of the Kansas City Cement Bureau.

4517 Mr. Leisure: May I ask the witness a question about these, your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. 153-A, Mr. Reiter, do you know what it is; have you ever seen it before? (Handing paper to the witness.)

A. I have never seen this letter before, to my knowledge, but I know from the face of it what it is.

Q. Just tell us what it is.

A. It is a partial list or index of code numbers of members of the Cement Institute.

Q. What do you mean by "code?"

A. I mean a number that is used in reporting statistics in the Cement Institute in lieu of using the full name.

Q. What is the purpose of using it?

A. The purpose of using the number is principally for brevity.

Q. That is instead of saying "Lone Star Cement Company of Pennsylvania" in a telegram, you say "Twenty-five," is that it?

A. Well, in a telegram you would probably use an
4518 abbreviation of their name, but on these reports such as the Institute gets out, combined with the contract number, in contract reporting, for instance, we just put in the case of the Medusa Company, 2-1000, in other words, that is Medusa's contract, 1,000, as reported to us.

Q. Instead of using "Northwestern States Portland Cement Company," you would simply use "Forty" in that report?

A. That is right.

Q. What is this exhibit; have you ever seen it before,— 139-19?

A. I am sure that I have seen this before, and it is another more complete list of code numbers, such as I have been describing for members of the Cement Institute. In this connection it is necessary to call your attention to the fact that this list was changing frequently, but this appears to be an early list, because many more numbers and many more members were added at a later date.

Q. Is that exhibit dated; is there a date on it anywhere?

A. No, sir.

Examiner Norwood: But the members remaining on there, they kept the same numbers, did they?

The Witness: Yes, sir.

Mr. Leisure: Are you prepared to state whether or not, Mr. Reiter, those are the correct numbers as they appear on that exhibit?

4519 The Witness: I remember quite a few of them as being correct; I do not remember all of them, of course.

Mr. Leisure: Your Honor, we have no objection to either of these exhibits, subject to correction. I mean by correction, being allowed to make the lists complete, to give the proper date to this exhibit 139-19, the other exhibit seems to be dated, 153-A.

(COM. EX. 153-A and 139-S were offered and received in evidence.)

By Mr. Wooden:

Q. Showing you papers marked for identification 1036-A to G, inclusive, Mr. Reiter, will you state what they are?

A. In response to a letter sent by me to the chairman of all committees of the Cement Institute, shortly after

I was made general manager in June, 1935, this is a reply from Blaine S. Smith, as chairman of the local Materials Committee, transmitting a copy of a statement of their activities, which statement was presented to the annual meeting in Chicago in November, 1934.

Mr. Wooden: I offer the exhibit in evidence.

4520 Examiner Norwood: Is there any objection?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Attached to Commission's Exhibit 1036-A is an exhibit 1036-B, which purports to be a draft of the report. Do you know whether there was any subsequent report drawn up in addition to that draft, or is that the final report?

A. I can not be sure, Mr. Leisure, inasmuch as this is headed "Draft" whether it was actually presented or not.

Mr. Leisure: We have no objection to it, Your Honor.

(COM. EX. 1036-A to G was offered and received in evidence.)

By Mr. Wooden:

Q. Briefly epitomized, Mr. Reiter, was the function of the local materials committee to induce State purchasing officials to remove any orders or policies that had the effect of giving preference to mills located within the particular State?

A. Yes, both as to State officials and Federal officials.

Q. And had no application to private purchases at all?

A. No, I think it had to do with public purchases.

4521 Q. Were there a considerable number of States that had policies giving preference to local mills?

A. Many of them had the idea from time to time and exercised it to a greater or less degree.

Q. Was the work of the local materials committee devoted to showing State officials that they could buy just as advantageously from out of the State mills as from those within the State?

A. I think it was more directed to the fact, Mr. Wooden, that if State barriers or tariff walls were built around the State—

Q. Not tariff barriers?

A. Well, I mean barriers on the State lines—that any preferences which they showed for materials within the

State would react unfavorably toward that State in another direction.

Q. They had to be able to show they could buy just as advantageously from out of the State mills?

A. I do not think they would make the effort to
4522 encourage them to buy outside of the State unless the price was equal to or lower than that which they would have to pay within the State.

Q. And there would have been not much chance of success if the mills within the State had made a lower price than the ones coming from without the State?

A. No, sir, there would not be much chance of success.

Q. What is the paper I show you marked 1037 for identification?

A. That is a general letter to all members of the industry dated December 27, 1933, signed by the Chairman of the Code Authority and pertaining to a ruling of the Comptroller General on the application of the N. R. A. Codes to the United States Government purchases.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure: Other than the fact that this has to do with the Code again, we have no other objection.

(COM. EX. 1037 was offered and received in evidence.)

Mr. Wooden: I offer at this time, your Honor, papers previously identified by Mr. Milwee and marked 146 and
148, copies of correspondence from the files of Mr.
4523 Lombard of the Cement Institute at New York, passing between the general manager of the Institute and the National Cement Company of Alabama.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 146 and 148 were offered and received in evidence.)

Q. What are the papers I show you, Mr. Reiter, marked 1038-A, 1038-B, and 1038-C?

A. This is a photostat of a copy of a letter from the Chairman of the Cement Code Authority, dated February 12, 1934, to the Deputy Administrator in charge of the Code, transmitting a copy of a letter from Elwood Mead, Commissioner of the Bureau of Reclamation, to the Chairman of the Code Authority. That covers 1038-A and B; 1038-C is a different subject.

Q. I thought it related to the matter of terms of sales, and it does relate, of course, to a different company.

A. 1038-C is a photostat of a copy of a letter from the Chairman of the Code Authority dated April 20, 1934, to a member of the industry, notifying them that a
4524 complaint has been filed against them for a violation of the Code.

Q. With regard to the terms of sale?

A. Yes, charging that a remittance was accepted after a discount period being the maximum provided by the code.

Mr. Wooden: I offer the papers in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure: Yes, your Honor. As to Exhibit 1038-A, it is a communication between two parties, neither of which is a respondent in this case, one being the Chairman of the Portland Cement Industry, apparently, to Mr. Murray, in the government service.

Mr. Wooden: It is a letter of the Chairman of the Code Authority, your Honor, transmitting the other document.

Mr. Leisure: 1038-B is another letter of similar character between two parties, neither of which are respondents in this case. We object to both letters as being incompetent, irrelevant and immaterial.

Examiner Norwood: What is 1038-C?

Mr. Leisure: As to 1038-C, we object as being within the Code period, as we have heretofore.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: I should like to reserve those for further consideration.

4525 By Mr. Wooden:

Q. What are the papers I show you, Mr. Reiter, marked 1039-A to D, inclusive?

A. They are copies of interpretations of the Code Authority to all members of the industry, dated January 30, February 10, February 26, 1934.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: Other than the fact that this is further Code material, we have no objection to these exhibits, your Honor.

(COM. EX. 1039-A to D was offered and received in evidence.)

Q. What are the papers I show you marked 1040-A to F, inclusive?

A. 1040-A and B are photostats of copies of a letter from James A. Keller, Vice President of the Pacific Portland Cement Company, to the Chairman of the Code Authority, dated March 29, 1934.

The Witness: 1040-C, D and E is also a copy of a
4526 letter from Mr. Keller to the Chairman of the Code Authority dated April 23, 1934; 1040-F is a copy of a letter from the Chairman of the Code Authority to Mr. J. B. John, President of the Medusa Company, dated May 24, 1934.

4527 (COM. EX. 1040-A to F was offered and received in evidence.)

Q. Referring to 1040-F, Mr. Reiter, what was the reason for the rule against employing salesmen on a commission basis?

A. It was quite evidently the feeling of those who prepared the code, concurred in by the officers of the
4528 N. R. A. who accepted that Code, that to pay a salesman on commission basis encouraged rebates or other unfair trade practices.

Q. Splitting his commission, in other words?

A. Splitting his commission, yes, sir.

Q. Have commission salesmen been employed to any extent in the industry?

A. Rarely.

Q. What are the papers marked 1041-A, B and C for identification?

A. Mr. Wooden, I can only tell you what these appear to be, as they were before my time. I will have to change that; they were dated in March and September, 1930, but were written by Luther G. McConnell, the general manager, and I probably did not see them at that time.

Q. You are not familiar with Mr. McConnell's signature?

A. Those are both—his name there is signed by others.

Mr. Wooden: I will offer them at any rate, in the hope that further identification will be waived; they appear on the face to be authentic reproductions of circulars of the Institute.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection, subject to check, Your Honor; this is just a photostat and if there should be

any correction to be made in the letter, I would like to have the privilege of doing it; I assume that is Mr.
4529 McConnell's signature; I do not know.

(COM. EX. 1041-A, B and C was offered and received in evidence.)

Mr. Wooden: I offer at this time papers previously identified and marked 147-D and 200. The first is a copy of a letter from Mr. McConnell to the sales manager of the Missouri Portland Cement Company with a copy marked for Mr. Reiter and bearing the file "G. H. R." stamped on it.

The other is a circular over the name of S. T. Storey, Chairman of the Committee on Forms and Contracts.

Examiner Norwood: Any objection?

Mr. Leisure: May I ask just one question?

Examiner Norwood: Certainly.

Mr. Leisure: Do you know who the general manager is there. Is that Mr. McConnell?

The Witness: That is right.

Mr. Leisure: No, we have no objection.

(COM. EX. 147-D and 200 were offered and received in evidence.)

4530 By Mr. Wooden:

Q. Mr. Reiter, has it been your experience in the cement industry that the purchaser of large quantities of cement is made the same price as a smaller purchaser?

A. I would say generally that is true, Mr. Wooden.

Q. Does that go to the extent that a State, for instance, that would purchase a million barrels would get no better price than the purchaser of a thousand barrels?

A. Again, generally, that has been true.

Examiner Norwood: Read that answer, please?

(The answer is read.)

By Mr. Wooden:

Q. When the Institute discontinued contract checking, did it preserve its files of information regarding contracts?

A. No, Mr. Wooden, it preserved typical files and reports of each division office of the Cement Institute which did contract checking or contract reporting.

Q. Did you have in mind that you might resume contract checking at some time in the future?

A. Well, the cessation was pretty definitely ordered by the Board of Trustees and, from that, I would say that the

Board showed no indication of having a resumption of such work in mind for the future.

Q. Your preservation of some of the files was not with that in view?

4531 A. Well, we thought it was advisable to keep samples of all forms that were in use and keep them for that purpose as a matter of record.

4532 Q. Since the discontinuance of land grant rate filing in the Institute, has the Universal Atlas Company circulated among its competitors any land grant rate information?

A. No, sir.

Q. Has it received from competitors any land grant rate information?

A. No, sir.

Q. Do you still in the Universal Atlas Company obtain your land grant rate information from the railroads?

A. I think that is done in almost all, or all cases; there may be instances where our own traffic department computes those rates in connection with information secured from the railroads.

Q. Did not Mr. Rader receive some land grant Government destination advice information from members during 1936?

A. Not so far as I know, Mr. Wooden.

Q. How do you account for the identity of bids on Government destination cost basis, subsequent to the distribution of land grant rate information through the Institute?

A. To the extent that that is true, I presume that the cement companies obtain their information as to land grant rates from the same source as it was indicated that they did in many cases during the time that the filings of land grant rates were received by the Cement Institute.

Q. Has there been an effort made to have the
4533 railroads supply that information since the Cement Institute discontinued collecting it and disseminating it?

A. It is my understanding that our own traffic department secures such information from railroad representatives.

Q. Do you know what others do?

A. No, I do not, Mr. Wooden.

Q. Has the Institute had among its committees, a so-called bag committee?

A. Yes, sir.

Q. What have been its functions?

A. With the aid of counsel the activity of this committee was designed to secure refunds to members of the industry through advice to them of processing and compensating taxes on cloth and paper bags, paid under protest to the United States Government, under the provisions of the Triple A Act.

Q. Has there been any committee that has dealt with the subject of returned bags and allowances for returned bags?

A. No, sir, statistics on the return of cloth sacks were collected by the various division offices of the Cement Institute in 1930, and then that activity was discontinued, to the best of my knowledge.

Q. Has the return of bags and allowances for bags at times been held to be a method of rebating?

A. Specifically in answer to your question, I do not know, but it could in my opinion readily become an 4534 unfair trade practice.

Q. By reason of rebating?

A. By reason of what amounts to rebating—making allowance for cloth sacks in excess of the stated policy of individual cement companies as set forth in their contract.

Q. Is there a standard allowance for the return of cloth bags of 10 cents a bag?

A. That generally applies throughout the country. I remember during th Code period that allowances varied at times, at least, in portions of districts 10, 11, and 12.

Q. The bags returned are supposed to be bags in good condition, are they not—usable condition?

A. In usable condition after repairs, if necessary, for at least one more trip.

Q. That gives somewhat wide discretion to the receiver though as to whether it is in good condition or not or whether they shall make allowance for them as being in good condition?

A. I think that is correct.

4542 EVERETTE MacINTYRE was recalled as a witness on behalf of the Commission and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Showing you papers marked 1042-A to L, inclusive, Mr. MacIntyre, will you state what they are?

A. These are photostats of papers furnished me by Mr. Joseph Young, of the Lehigh Portland Cement Company, in his offices at Allentown, Pennsylvania, on September 9, 1931, after I had selected the papers from the files of the Lehigh Company.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: We have no objection to the exhibit.

(COM. EX. 1042-A to L was offered and received in evidence.)

4544 Washington, D. C.
Tuesday, March 29, 1938.

4545 (COM. EX. 1038-A, B and C was offered and received in evidence.)

4546 Mr. Wooden: Yes, Your Honor, in just a moment. On March 18 I asked for the production of the original of a communication marked for identification 1032-A and B. I do not know whether Mr. Leisure is ready to report on it, but I think I can save him any further trouble about it, because we have, among the papers produced under subpoena, an original of that same document.

Mr. Leisure: Very well; we will not look any further.

Mr. Wooden: It is addressed, however, to R. B. Henderson, President of the Pacific Cement Company, dated July 5, 1934, whereas the copy we requested was
4547 addressed to George R. Gay, President of the Santa Cruz Portland Cement Company. The photostat of the original has been numbered 662-A and B for identification and I would offer at this time, for the record, that paper, with the understanding that the number "1032-A and B" be cancelled.

Examiner Norwood: Well, the number will have to stand, but when you introduce the original it will be given a new number.

Mr. Wooden: The original already had a number for identification, among those documents produced under the subpoena.

Examiner Norwood: Then, it will have to keep that number. Have you any objection to the exhibit?

Mr. Leisure: We have no objection.

(COM. EX. 662-A and B was offered and received in evidence.)

4548 W. W. CAMPBELL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am in the lumber and building material business at New Wilmington, Pennsylvania. In connection with that business I have in the past taken membership in associations of building supply dealers. We are members of the National Builders Supply Association and Western Pennsylvania Builders Supply Association which later was merged or taken in with the Western Pennsylvania Builders Alliance. We were members of the National Association during 1930 until about the spring of 1932 when
4549 the National abandoned. I was president of the National Association from December, 1928, until it folded up in 1932.

Q. During your term as president, did you have occasion to arrange any conferences with representatives of cement manufacturing associations?

A. Yes, sir.

Q. With whom?

A. One conference that we had with the cement manufacturers' association was held rather jointly with, I would say, the railroads, in order that we could—to ascertain if we could possibly stabilize—.

4550 Q. State who attended the meeting and the date of it, first, if you please?

A. Well, the date was, I would say, around July. I did not post myself on the date. It was the 22nd or something like that.

Q. July of what year?

A. 1931.

Q. And it was held where?

A. At the Commodore Hotel, New York City.

Q. As a joint meeting of your association and representatives of the cement manufacturers and the railroads?

A. Between myself, as president, and Ed Hallway and with Mr. McFarland, who was at that time, president of the Cement Institute, located with the Medusa Coment Company at Cleveland, Ohio.

Q. Who, at that meeting, represented the railroads that you had reference to?

A. There were several. I do not recall all the people because I did not know them, but we asked to
4551 come to that meeting five of the larger railroads and each one had a representative there. It was wholly informal and I could not give you the names of the people who were there because we made no note of it and I do not think there was a minute taken of it. It was just a general discussion.

Q. Can you name the railroads there were represented there or any one of the railroads that were represented?

A. The Baltimore & Ohio, Pennsylvania, the New York Central—there were five. It seems to me the Jersey Central was there, but I would not want to say.

Q. Who represented the Pennsylvania at that meeting?

A. Mr. Eysmans.

Q. Did you have any later meetings of a character similar to that one held in New York?

A. We had a meeting in January—the date I am not certain about—along about the 7th, in Philadelphia, at, I think, the Ben Franklin Hotel.

Q. That was January, 1932?

A. January, 1932, yes, sir.

Q. Did the same persons attend that meeting that attended the New York meeting?

A. Not the same personnel except our own—Mr. Hallway and myself for the National Builders' Supply Association, and Mr. McFarland for the other. I believe Mr. Collyer was there representing the railroads, but
4552 who the other parties were I could not say because no minutes were made.

Q. Mr. McFarland, of the Cement Institute, also attended that meeting?

A. That is my recollection.

Q. Were there any other representatives of the Cement Institute or cement manufacturers there to your knowledge?

A. I could not say, because I did not know them. I probably knew at that time, but I do not know now.

Q. Who called the first meeting, to your knowledge?

A. I did.

4553 Q. You called it?

A. Yes, sir.

Q. What was the purpose of your calling it?

A. To see if anything could be done to regulate the delivery of cement to any given point.

Q. By what means?

A. Well, it had been—

Q. (Interposing) I mean by what means of transportation.

A. By railroad.

Q. Was the transportation of cement by means other than by railroads discussed at the two meetings?

A. Not discussed as against any means of transportation, but as stabilizing the cement delivery to any given point.

Q. Was the problem of truck transportation of portland cement discussed at those two meetings?

A. Not as an industry, excepting perhaps we probably discussed a proposition that was put out by some national trucking concern that was, at that time, thinking of doing transcontinental trucking and loading both ways; that is, coming one way loaded with one item and going back loaded with another.

4554 Q. Were any proposals advanced by Mr. McFarland at the meeting concerning the trucking of cement?

Mr. Leisure: Is this the first; meeting?

Mr. MacIntyre: Either one—the first or second.

The Witness: I would not know because I do not recall whether he presented anything or not.

4555 Q. What prompted you to call the meeting for discussion of the problem of transportation of cement, Mr. Campbell?

A. Lack of any basic price on the commodity at any given point.

Q. That is, Delivery points?

A. Delivery points.

Q. And what had led to the lack of any certainty as to the delivered prices?

A. Irresponsible—

Mr. Hershberger (interrupting): Just a moment. May I ask a question? What territory does that refer to?

Mr. Hershberger: Your answer refers to the entire country?

The Witness: Yes, sir. As far as was reported to us. I think all of the States and all of the territories, trade areas, and so forth, were equally affected, by the conditions that existed, and we were trying to stabilize
4556 the market so that we would know, as dealers, where we stood, where we were and how we could quote.

By Mr. MacIntyre:

Q. What led to the lack of stability of which you have spoken?

A. Deliveries, that is, quoted deliveries far below the possible price at which said deliveries could be made.

Q. In other words, there were varying prices at one delivery point for the same commodity?

A. Yes, sir.

Q. That is, such as cement?

A. Yes, sir.

4557 Q. Did motor trucks, that is the transportation of Portland cement by motor trucks, promote to any degree the variation and lack of stability in the delivered prices about which you have spoken?

4558 The Witness: Not the motor industry as an industry, but irresponsible or more or less responsible truckers in the various localities. In other words, if I may, Your Honor, continue to explain that?

Examiner Norwood: Go ahead.

The Witness: It was the custom of the contractors to get cement delivered as cheaply as they could, and he would go into the highways and by-ways to people who were irresponsible, and cement was put on many jobs below the possible price of delivery, and it was just to stabilize that market at a given point which made the delivery then
4559 itself becoming a competitor, and would leave the industry having an irregular market.

By Mr. MacIntyre:

Q. Now, with respect to dealers trucking cement on their own account and in their own trucks, did you run into experiences where that occurred?

A. We did it altogether.

Q. Did that lead on the part of any dealer to a condition such as you have described just a moment ago?

A. It was the outside concern who did not own his truck who was probably buying it on payment, or had paid no taxes of any kind, trucking, whereas a dealer who was responsible and owned his own delivery, had his costs down to a minimum and could not even touch him.

Q. That was one of the conditions, of course, that was sought to be eliminated through these conferences?

A. Yes, sir. And when it came to the point of delivery, then it became a matter of competition. It was not that this dealer could not go ahead—that this trucker who probably did not own his truck—could not deliver that cement or could not truck it from a given point.

Q. And made for uncertainty as to price at particular localities?

A. Yes, sir.

Q. Both on the part of manufacturers and the dealers?

4560 A. Yes, sir.

Q. Now, coming back to the organization which you represented, Mr. Campbell, the Ohio Builders Supply Association, were you at that time acquainted with, or a member of that association?

A. I was never a member of it.

Q. Well, you as an officer of the National Association, did you have knowledge as to whether it had membership in the National Association at that time?

A. I don't know whether it had direct membership in the association as an association or not, because if it had a direct membership in the National Association, it would have paid in dues as an association to the National Builders Supply Association, which I do not think was the case, but the larger members, that is the majority of the larger dealers in the State of Ohio were members of the National Association.

Q. Who were also members of the Ohio Association?

A. Quite naturally, yes, sir.

Q. And included in that list was Mr. Holway?

A. Yes, sir.

Q. What about Mr. Alcorn at Youngstown?

A. He had a direct membership in the National Association at that particular time.

4561 Q. What about the Pittsburgh dealers that you can recall?

A. As an association, no.

Q. What about the individuals?

A. The individuals, some four or five or six of them, yes.

Q. Can you name any of them?

A. McCrady-Rogers, George Lanza, D. J. Kennedy Company, Ed Vero and another man I think by the name of Nathan,—I am not just certain about that last name, but there was one more there, I am quite certain,—I think it is Nathan Builders Supply or Mr. Nathan was the manager of it, and I cannot give the correct name.

Q. At the meeting, what did you propose that the manufacturers do toward meeting this problem of the
4562 trucking of portland cement?

A. I don't recall that the manufacturers made any overtures but I believe it was ourselves.

Q. Well, I am asking you what overtures you made?

A. We made the overture to see if it was possible for the cement industry as an industry to quote or give a delivered price at any cerain point that might be of interest and in competition at that one time.

Q. Delivered prices?

A. And if that could be accomplished any other way than by railroad, the rates of which are definite and established by law.

Q. In the event that the dealers continued to ask for delivery to their truck at the mill, what proposal did you advance to meet that situation?

4565 The Witness: We made no direct proposal. We asked the manufacturers if they could not quote a delivered price at a given point and making it then competitive among the dealers.

By Mr. MacIntyre:

Q. Was there any discussion as to prices at the mill in the event the dealers called for delivery at the mill?

A. I am quite certain, no. If I may elaborate on that, cement sometimes was trucked as high as 30 or miles at a price impossible to be delivered at the price charged for delivery.

Q. Did you make any suggestions as to the discontinuance of trucking on the part of the manufacturers, that is, the permission of trucking?

A. We asked the manufacturer if he could make a delivered price to a certain point, a point of contention or any given point, and would it be possible to give the quotation price at the point of delivery rather than at a mill price.

Q. In carload lots or truck lots?

A. Car lots.

Q. Car lots only?

A. No, I would say in car lots, but it would be trucked—it would be given in car lots, because the jobbers, the jobs on which the concerns were interested were jobs
4566 that consumed ten or twenty or thirty cars, but they would go out in smaller units.

Q. And at what price?

A. That was at a mill price, but quoted—all of these prices, understand, were quoted at a delivered price on the job and not a mill price.

Q. At delivered prices on the job, at what prices compared with the railroad delivered prices? Would they be the same or different?

A. Never less than the railroad price, I do not think, but they would then have to be trucked from the railroad onto the job, which incurred a different price. They were probably trucked to the job for below what it could possibly be trucked for, because the railroad price at that time and is today cheaper than any other trucker can haul it even for a ten-mile haul.

Q. But the delivered price at destination would be the railroad price, did I understand you to say?

A. Often times was.

Q. Or more?

A. Sometimes a little more, but it was the upsetting of the market when it was less than it could possibly be put on the job for.

Q. Now, as to what was accomplished in those directions at the meeting, can you state what, if anything,
4567 toward stabilization was accomplished at the meeting?

A. We only stated at any meeting, we only stated the disadvantages to us as an industry and prayed if they would not do something to make a staple market, which only business can have if it is going to have any business at all.

Q. Did you have correspondence with the officials of the cement manufacturing concerns and the railroads con-

cerning these meetings and what was proposed to be accomplished and was accomplished at them, including Mister—did you have correspondence with such people as Mr. Eysmans on those points?

A. Yes, sir.

4568 Q. These two meetings that Mr. MacIntyre asked you about,—on this first meeting I believe you said that Mr. MacFarland was there?

A. We asked Mr. MacFarland to come as representing the Cement Institute.

Q. Was he at that time vice president of the Medusa Company?

A. I could not tell you that. I think he was, but I could not say positively.

Q. Are you positive Mr. MacFarland attended the meeting as a representative of the Institute rather than his own company?

A. Yes, sir.

Q. Did the invitation invite him as—

A. (Interposing) As president of the Cement Institute, not the Medusa.

4570 Q. Now, this first meeting that you called was in 1931?

A. Yes. My recollection is that it was July 22. I might be mistaken, but I think that was the date—1931.

4571 Q. You mentioned competition during your direct examination, at the place of use. Do I understand by that that you had to meet competition at the place of use of the cement? Is that where the competition is felt by you?

A. Any person in any business at any place can not sell a commodity at a higher price than it is sold by someone else.

Q. That means where it is being used, does it not, in your business?

A. Yes, sir.

Q. Mr. Campbell, you mentioned, in answer to Mr. MacIntyre's questions about trucking—I notice you said not the entire industry, but irresponsible trucking concerns were responsible for these varying prices? Is that correct?

4572 A. If I know the country right, I think there is extant today a truckers' organization that has in mind the protection and development of the trucking in-

dustry. I may be wrong in this, but it seems to me some invitations of that sort have come to my attention and probably to my desk at certain times, but as an industry and as an association, I think no doubt it had nothing to do with it, but it was just the conditions largely brought about by people who wanted to get it delivered as cheaply as they could, and the conditions were local, but universal, if you understand what I mean.

Q. So your problem, when you called this meeting, Mr. Campbell, related primarily to the protection of established dealers from the loss of sales caused by irresponsible dealers and irresponsible truckers?

A. Yes, sir. Wait a minute; let me have that question again.

(The reporter read the question.)

A. I would not use the word "irresponsible." I said some were irresponsible and some were responsible, but these truckers put the cement on the job cheaper than it could possibly be handled by trucks.

Examiner Norwood: You mean by regular trucks?

The Witness: Yes, sir.

By Mr. Leisure:

Q. And that condition was arrived at, as you have 4573 already described on direct, by truckers who did not pay taxes?

A. They had no responsibility.

Q. Do you handle any Government business, Mr. Campbell?

A. I do not.

Q. Do they patronize you or try to buy direct from the mills?

A. All cement manufacturers sell Government jobs direct.

Q. You have been in business since 1914. Has that always been so?

A. Yes, sir. In 1914 I was merely the manager of an estate that had the business and I took it over personally in 1919.

By Mr. Hershberger:

Q. When did this condition of delivery by irresponsible trucks originate? How long did that condition exist as a detriment to the business?

A. It existed when I entered the business.

Q. Was it accentuated during the depression?

A. Yes.

Q. Had you taken any steps to combat it prior to the meetings that you testified about?

A. Well, I would have our own meetings, as to how
4574 we could meet it, or any way to reduce our expenses or overhead or meet that price condition that existed and oftentimes we would talk to manufacturers' salesmen about it, who had no authority whatever, but who might carry a complaint back of a condition that existed.

Q. Was the use of these irresponsible truckers, as you characterize them—

A. That is a pretty hard name. I said a few of them were. I would not say that anybody that trucked anything was irresponsible. There were a few in the industry.

Q. What you meant was truckers who were hauling below the cost of trucking cement?

A. Yes, sir.

Q. Was use of that service made by dealers in your community or by dealers in other communities who would come in to your territory?

A. I do not know of a dealer that trucked anything below what he could possibly make the delivery for.

Q. I mean, were the dealers in the territory which you were serving, themselves making use of these irresponsible truckers?

A. No, sir.

Q. It was dealers from outside would come in?

A. In a few instances, some trucking concern would come in, but it was usually some person with an old
4575 truck which would probably stand up through the job.

By Mr. Zimmerman:

4576 Q. Now, your talk about this meeting and the purposes of it led me to infer that it might be considered that you were there to fix prices of cement. Was that any part of your purpose at all?

A. No, sir.

Q. You had no intention of attempting to regulate the price of cement?

A. No, sir.

Q. That had nothing to do with the purpose of the meeting?

A. No, sir.

Q. Your only purpose was to try to clear up a situation which made it very difficult for dealers who operated upon fair and honest cost bases to compete with persons that did not operate on those bases?

A. Yes.

Redirect Examination by Mr. MacIntyre.

4577 What would your prices for truck delivery in comparison with rail delivery at that location be?

A. No trucker can pay his honest debts, his gasoline and keep up his trucks and make replacements and deliver cement to any job at any distance beyond two or three miles, as cheaply as the railroad can lay it down.

Examiner Norwood: That does not quite answer the question. He asked you if the prices were the same or what difference there was between the prices.

4578 The Witness: We would have to be a little over the railroad point. In some cases it might be less, if it is very close to the cement plant, which is not very often.

By Mr. MacIntyre:

Q. In other words, your railroad price probably controlled as a minimum price and the trucker's price would be a higher price?

A. Usually it was.

Q. On such cement as you had trucked?

A. Yes, sir.

4580 Q. You have testified that the prices did vary and in many cases when trucked, especially as you have said, by some truckers and dealers, and the cement was sold at a lower price than if hauled by the railroad—will you explain if you found that to be prevalent as a practice up to and including the date of these meetings in 1931 and 1932?

A. There was nothing definite excepting that the cement was put on the job, or on jobs, at a price below the possible cost of delivery and we presumed that the trucker was being taken care of by either the contractor or someone else.

Q. But you had no evidence of that?

A. No, sir.

Q. And when you speak of cost, you are basing your thought on your own cost rather than on the cost as you knew it of other truckers and dealers?

A. Yes, simply because we had a less overhead and our overhead was down to a point where a person with a less reliable truck had a much greater overhead in making
4581 his delivery than we did.

Mr. Hershberger: When he says "we" does he mean his own company or the industry?

The Witness: Only my own company.

By Mr. MacIntyre:

Q. Do you have any direct knowledge as to the cost of these other people who did handle cement by truck—that is, the dealers and truckers?

A. Will you specify just a little more clearly—

Q. (Interposing) You have spoken about these people who handle cement by truck having handled it at the low cost, and I am inquiring now to determine whether you had direct knowledge of their cost so as to determine definitely whether or not they were below cost?

A. No, only I have direct knowledge of the trucker telling us—my concern now—that he was getting more for his delivery than he was reputed to be delivering it on the job for.

Q. Was he doing that below cost? Did he say it was below his cost?

A. He told us he could not possibly do it. He used, as an incident,—let us say that a trucker will say he is getting 22 or 24 cents where the contractor will say he is paying 12 cents. The trucker, a reliable concern, says he is getting 22 or 24 cents.

4585 Q. Why did you consider that Mr. MacFarland and the cement manufacturers would be interested in the meeting at New York so as to result in his attendance there?

4586 The Witness: The main source of trouble was cement, which was really the one commodity that upset the industry more than any one item, and we asked Mr. McFarland, as president of the Cement Institute, that had in mind the promition of the cement industry and the use of concrete and cement, to some there and see if he could

as a representative of the Institute, help solve this problem.

By Mr. MacIntyre:

Q. In what way did you hope Mr. MacFarland could assist in the solution of this problem?

4587 A. The basic part of it was that it was mill delivery to the truck that caused it.

Q. And what was done, if anything, about meeting that problem?

A. Nothing at that particular time. He took it up with the Cement Institute, as I understand it, himself. We presented to Mr. McFarland what we thought might be a remedy.

Q. And what was that?

A. And what the Cement Institute did after that, it did on its own volition.

Q. What was your suggestion?

A. That it close its plant to the trucking of cement.

Q. And take rail deliveries only?

A. And take rail deliveries. I might augment that a little bit more,—if that would solve it.

Q. Well, following Mr. Hershberger's question as to when the discontinuance of the trucking of cement came to be a problem to you in other than your industry, just what date can you fix as to the passing out of the problem, or whether it came to be no problem to you?

A. Well, I would not have any idea. It was probably a year after that meeting, and it may be more, that the cement industry on its own volition closed its plants to dealers and truckers alike.

Q. You would say within a year after the July meeting?

4588 A. Yes, but I do not know the exact date; but the Cement Institute did not close it, because a lot of the plants were still open and are open today.

Recross Examination by Mr. Leisure.

4589 By Mr. Leisure:

Q. You stated that it was this problem of cement that was upsetting the industry. You had in mind the building industry when you said that, didn't you?

4590 J. L. EYSMANS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am vice-president of the Pennsylvania Railroad.
4591 Until 1933 I was vice-president in charge of traffic.

4591 Q. During that period that you served as vice president of traffic, did Mr. Campbell of the Campbell Company who has just testified contact you or write you about portland cement transportation by motor trucks?

A. Well, he asked for a meeting to discuss the situation, and I suppose the letter did incorporate something with respect to trucking.

Q. And a meeting such as he suggested was arranged?

A. It was arranged.

Q. Can you state the time and place?

A. July, 1931, is my recollection.

Q. In New York?

A. In New York.

Q. Can you name any of the persons who were present at that meeting?

A. Well, outside of Mr. Campbell, and there was
4592 another gentleman there—I have forgotten his name—I cannot.

Q. Do you recall whether Mr. McFarland was present?

A. I do not recall Mr. McFarland being there. He probably was; I don't know.

Q. Do you recall whether minutes were made of the meeting?

A. No minutes were made of the meeting. There was present at the meeting Mr. Collyer, R. N. Collyer, who was at that time chairman of the Trunk Line Association, and whenever we had meetings with industry, especially in groups, we asked Mr. Collyer to come there and sit with the railroads, so that in the event any actions had to be taken by the railroads, he as the chairman would be familiar and would facilitate any transactions that had to be carried out.

Q. Any memorandums made of the meetings were probably made by him?

A. I discovered the other day looking around into this thing to familiarize myself with what had transpired, that he made a report, a subsequent report of this meeting to the membership at one of its regular meetings. There was only present at this meeting that you speak of, a few of the railroads. They were not generally invited. There was the B. & O. and the Pennsylvania, the New York Central, The Erie, Chesapeake & Ohio, the Chesapeake & Ohio having been represented at that meeting by one of the officers of the Erie Railroad.

4593 Q. Mr. Collyer, I understand you to say, was the chairman of the Trunk Line Association?

A. The Trunk Line Association.

Q. That is an association of railroads serving the eastern territory, is it?

A. Yes, sir.

Q. The freight executives?

A. Yes, sir, freight and passenger.

Q. Of which your company, the Pennsylvania, is a member?

A. Our line is a member of the association.

Q. Of the Trunk Line Association?

A. Yes, sir.

Q. And all other railroads in the eastern freight territory?

A. Practically all.

Q. Were there any subsequent meetings?

A. There was a subsequent meeting, but I did not attend it.

Q. Any representative of your company attend it to your knowledge?

A. Yes.

Q. Who?

A. Mr. Large, John Large, the general traffic manager.

Q. You were his superior at that time, weren't you?

A. Yes, sir.

Q. Reports of his attendance at that meeting were made to you, were they?

4594 A. Yes, sir.

Q. One that he attended in Philadelphia. Did he also attend with you the meeting that was held in New York?

A. My recollection is that he did.

4597 Q. Will you state whether or not there was a principal subject discussed?

A. Yes, there was.

Q. And what was that subject?

A. Well, it was the general plight of the industry, and by that I mean the men in the supply business were having apparently a considerable lot of difficulty in transacting their business because the trucks had crept into it in such a way that there was no stability as to what prices were, and a great deal of havoc apparently going on. Now, I can not just differentiate in my own mind as to whether some of these things I am going to say were actually brought out at that meeting or whether it was my own knowledge of the situation that we had dis-
4598 covered ourselves over a period of years, but the supply men complained at that particular meeting, however, that the business had practically gone haywire because of the entrance of the trucks.

Q. What caused that? Did they state?

A. What caused it?

Q. What caused it to go haywire because of the trucks?

A. Well, these truck operations meant that the operators of the trucks were going to the cement plants and taking cement direct to the jobs, nobody knew what they were charging. Some of these fellows that were in the business, and this is a point that I am not clear whether it was discussed there or whether it was my own knowledge of the situation, were what we call fly-by-night truck operators. It was about the beginning of the depression, and men who had lost their jobs, mechanics we will say, maybe two mechanics, would join together and buy up a second-hand truck on an installment basis, were able to repair it and keep it in repair fairly well, and they would go in the trucking business, and what charges they were making were whatever they could get, whatever the traffic would bear, I suppose, they meant by that. In some cases it was one rate, in some cases it was another, in some cases these truck operators were, you might say, dealers themselves, men that were not keeping books as to what this thing was costing them, and making any price that they could get for the delivery of cement.

4599 Q. Did you have any knowledge that they were doing business below cost?

A. No, just hearsay.

Q. Did you learn at the meeting you attended what the

interests of the cement manufacturers were in meeting this problem?

A. Well, I was not certain until I heard some—I am not certain yet about that—but we entered this room with these gentlemen and introductions were made, of course one to the other, and names did not mean anything to me as to just what each person there was, whether he was a supply man or a manufacturer. I thought they were supply men; I did not know there was anybody there from the cement industry until I heard the testimony this morning about Mr. McFarland. I did not remember Mr. McFarland's name.

Q. Were there railroad men there also that you did not remember?

A. No, sir, I recall all the railroad men.

Q. You can not recall the names of those who attended from the railroads, at this time?

A. Yes, I think I can. Mr. Denny of the Erie Railroad to my recollection was there, Mr. Brisker of the New York Central, Mr. Elisha Lee, John Large and myself of the Pennsylvania, I think it was Mr. Shutmate representing, I am not sure, the B. & O. Mr. Denny represented the

4600 Chesapeake & Ohio, because I remember a letter from the president of the Chesapeake & Ohio saying that he could not attend the meeting but he would be represented by Mr. Denny, the vice president of the Erie Railroad, but outside of Mr. Campbell I am not certain of the name of anyone connected with the supply business, and if there was anybody there from the manufacturing end of it, I do not recall.

Q. Would you be able to state if Mr. E. F. Flynn, the freight traffic manager of the Grand Trunk Railroad, was present?

A. I would say that he was not, to my recollection. He may have been there. Now, sir, I am talking about the New York meeting, you understand, not the Philadelphia meeting.

Q. When group meetings such as this one you have described were held, was it customary on the part of the railroad officials and the officials of the Association of Railroads, to send all the people present reports of what occurred at such meetings?

4601 The Witness: No. In this way,—now, you are talking about the railroad officials making reports?

By Mr. MacIntyre:

Q. Yes.

A. If I attended—for instance, if I had a meeting with a group, an industry group, and which often happens, discussing matters relating to the Pennsylvania Railroad, I generally made a memorandum of that meeting if there was any importance to be attached, anything that you would have to recollect in the future. In the case of a meeting such as this where all the roads were present, or a number of the roads were present, and the Chairman of the Trunk Line Association was there, he was the only one that ever made the minutes of the meeting.

Q. Was it customary for him to send reports of such meetings to those who attended?

4602 Yes. He would very likely, where there were a few of the roads there, not the full membership, he probably made some memorandum, and then distributed that to all of the membership lines, so that all would be apprised of what had taken place, because everyone was so suspicious of everybody else that they might get a little jump on some other fellow, that they tried to keep the thing pretty clear.

Q. What about reports being made to the shippers that were present? Do you know whether reports were made to shippers?

A. No.

Q. You don't know?

A. No reports were made to shippers; they make their own reports. There are records accessible to them if they want to see what we have got, but there is no interchange of that kind of records.

Q. Now, coming back to an earlier question of mine which I do not believe has been answered, will you state what was the expressed interest of the cement manufacturers who attended the meeting as to their interest in the meeting and why they attended?

4603 Examiner Norwood: Have you stated that you could not answer that question?.

The Witness: I could merely explain what happened at the meeting; that is all.

Examiner Norwood: Well, do that.

Mr. Leisure: Your Honor, the question asks for an expression of cement manufactures. This witness has said that he could not recall whether cement manufacturers were there.

Examiner Norwood: I will ask him to answer from his own knowledge.

The Witness: Now, where do we stand?

Examiner Norwood: Read the question.

(The question is read.)

The Witness: I do not recall anything of the kind taking place.

By Mr. MacIntyre:

Q. Did you learn—

A. (Interrupting.) Mr. Campbell was the spokes-
4604 man, and there was one other gentleman that I am sure was in the supply business—I don't recall his name—that spoke. If there were any manufacturers there, they did not impress me that they were making any point on this situation at all. I think they were there pretty much as we were, listening to what was to be said. I mean it was all discussion of the supply people. I don't recall their difficulties. There was nobody got up there as a manufacturer, a cement manufacturer and described that he had any difficulties that were being covered along the line that Mr. Campbell had developed at the meeting.

Q. Were reports made to you by your subordinates in your company immediately preceding and immediately succeeding the meeting that we have discussed concerning cement manufacturers and their attitudes on the trucking problems?

A. Not in that way. Our field men were naturally—you go back to, well, I would say 1928, is when the trucking business got to be a real factor in competition with the railroads, some little before that, but that is when it began to reach magnitude. Our field men were reporting on situations as to truck competition where we were losing traffic because of rate conditions or otherwise. We were pretty familiar with this whole thing, this whole situation that was brought up at the meeting of July, 1931, before we
went there, as to the loss of the business, and that
4605 was the thing only in which the railroads were interested. That was our selfish interest, the loss of traffic to trucks who were not publishing their rates and could make any rate that they wished overnight, and I guess we were in just as deep a plight or more so than the supply people who were there describing their plight. I don't know that that fully answers what you asked me,

but if you will read the questions, perhaps I got off the track a little, Mr. Examiner.

(The question is read.)

4606 The Witness: Well, naturally, in our solicitation of the business from the cement manufacturers, we discovered that business was being diverted from the railroads, and in some cases they could give us the reasons and in some cases they could not give us the reasons or did not—I should not say could not, but the main difficulty, as far as we were concerned, was the comparative rate structure of the railroads as against competition of the trucks. I do not know whether that answers your question or not, but that is the best I can do with the question.

4607 Q. Is Mr. H. C. Oliver, a subordinate of yours—was he, at the time you were vice president in charge of traffic?

A. Yes, sir.

Q. And J. B. Large, I understand, was also with you at the time you were vice president of charge of traffic?

A. Yes, sir.

4608 Q. Mr. Oliver was in Pittsburgh, was he not?

A. Yes, sir.

Q. Mr. Eysmans, do you recall whether, subsequent to the meetings in New York and Philadelphia, about which you have spoken, that subordinates of yours in the traffic department of the Pennsylvania Railroad, held conferences with the cement manufacturers in their respective offices throughout your territory for the purpose of determining what they expected to do about the problem of motor truck transportation of Portland cement?

A. Yes, following the meeting at New York—and I know they followed the same practice in connection with the Philadelphia meeting—we had some of our men go out and see some of the manufacturers and develop their side of the situation that was discussed at these meetings.

Q. And reports, of course, on those conferences were made?

4609 A. Yes, but whenever we would get an answer back it was always about reducing rates to meet trucks.

Q. It was your interest, in acting upon reports made, to recover, as far as you could, as much tonnage for the railroads and particularly your railroad, as possible?

A. Yes, sir; not only in cement, but in every other line of industry.

Q. And that was your interest, of course, in attending the meetings in New York and Philadelphia, was it not?

A. Yes, sir.

Q. To your knowledge, was not that the reason for the attendance by Mr. Collyer at the meetings at New York and Philadelphia?

A. Mr. Collyer was brought there to be with us in connection with anything that might be discussed that would require railroad action.

I would like to say this for Mr. Collyer, if I may, so you may not get confused as to the reason he was there. Mr. Collyer had nothing to do with the matter of procurement of freight for the railroads. He acted under the direction of the railroads in handling our rate questions and naturally, when we have meetings of groups of people connected with business, the matter of rates is generally one of the objects brought out.

Q. His interest would be that of the railroads in
4610 recovering tonnage that had gone over to transportation by motor trucks?

A. The question of making proper rates.

Q. No other interest than in aiding in the return of such tonnage?

A. That is right.

Cross Examination by Mr. Leisure.

Q. Mr. Eysmans, during the period of time that Mr. MacIntyre has been questioning you about, the railroads were having a pretty hard time too, were they not?

A. Yes, sir; serious.

Q. I believe you have told us that this type of trucking has contributed to some extent to your difficulties?

A. Yes, sir.

4612 By Mr. Leisure:

Q. Was there any discussion at either of these meetings that you attended, as to whether or not the mills should sell f.o.b. alone?

The Witness: No, I have no recollection of any discussion as to that.

4614 JACOB GOTTSCHALK, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am secretary of the Traffic Executive Association, Eastern Territory, and the Trunk Line Association, Traffic Executive Committee with offices at 143 Liberty Street, New York. I have been secretary of the Traffic Executive Association and its predecessor, the Traffic Executive Committee, Eastern Territory, since March 1, 1920
4615 and of the Trunk Line Association, Traffic Executive Committee since some time in August 1922.

Q. Do you, in connection with your duties as secretary of either of the associations,—and if so, which—have occasion to attend any meetings of officials of your association—did you have occasion to attend meetings of officials of your association with officials of the cement manufacturing concerns and officials of building supply dealers' associations and organizations?

A. In the ordinary course of the business of the associations with which I am identified, there are numerous conferences from time to time with respect to matters affecting rates. I should say principally rates. There have been other conferences to which I understand this proceeding directly relates, which were held in 1931 and 1932.

Q. Did you attend meetings of the character I have mentioned during 1931 and 1932?

A. I have a distinct recollection of the meeting held in January, 1932, but as to a meeting in July, 1931, concerning which a question has been raised, while I believe I was present, I should like to examine my file and determine that definitely.

Q. As far as you can recollect at the present time, state whether you were or were not present at a
4616 meeting on that date; that is, July 22, 1931, at which representatives of the cement manufacturing, building supply dealers, and the railroads were present?

A. I have every reason to believe that I was present at a meeting held in New York on July 22, 1931.

Q. There is no question about your having attended

such a meeting on January 7, 1932, in Philadelphia, is there?

A. There is no question about that.

Q. As you recall, did you make minutes or write up the minutes in memorandum form for Mr. Collyer, your superior, when you attended such meeting?

A. Those meetings which I attended with him were recorded by me and the memorandum which was made for our file, but not for distribution, covers a meeting of January 7, 1932. That was prepared by myself, personally.

Q. Did you likewise prepare minutes of the meeting of July 22, 1931, in the event you did attend?

A. There is a memorandum which has been prepared of the meeting of July 22, 1931, which I have every reason to believe represents the record of that meeting.

Q. And prepared by you?

A. I believe it was, but I should reserve the right to check and ascertain before making a statement under oath.

Q. As to whether it is your own record?

A. Yes, sir.

4617 Q. Did you prepare a circular letter for distribution to the people who attended that meeting or the meeting in January, 1932—that is, letters for distribution to railroad officials?

A. The preparation of circular letters to our member lines is part of my assigned duties.

Q. Do you recall having prepared such circular letters concerning either of the two meetings which have been mentioned, and distributed the same to your member lines?

A. I should like to see the circular letters before committing myself. I know that circular letters were prepared under my direction.

Q. I hand you papers which have been marked for identification as Commission's Exhibit 1043-EE and 1043-FF and ask you if that represents one of the circular letters about which we have spoken?

A. That is a circular letter which was distributed by our office under my direction.

Q. Concerning the meeting of July 22, 1931?

A. Right.

Q. Would you say that that is a correct copy?

A. That is one of the copies which was prepared for distribution.

Q. By you?

A. Yes.

4618 Q. I should like to ask, Mr. Gottschalk, whether or not during 1932, you furnished representatives of the Federal Trade Commission with documents, or had anything to do with the furnishing of representatives of the Federal Trade Commission with documents in the files of Mr. R. M. Collyer, chairman of the Trunk Line Association?

The Witness: It is my recollection that, in May, 1932, you called at our office and asked to be permitted to see our file dealing with the matter of relations with the National Supply Dealers' Association and marked certain documents of which you desired a copy. By direction of Mr. Collyer, I furnished those copies.

4619 The witness identified Com. Exs. 1043-4S, 1043-4T and 1043-4U as a memorandum prepared by him for Mr. Collyer as a result of a meeting held in Philadelphia on January 7, 1932. The witness believes that those gentlemen who are named in the memorandum were present at the meeting. He is generally pretty careful in making such a record.

4620 Q. Can you, by refreshing your memory, state whether or not Mr. McFarland of the Cement Institute attended the meeting of January 7, 1932?

A. Speaking from recollection, I could not do so. Speaking from the matter of having made a record, I believe that he was present.

Q. Does the record prepared by you show whether he was present or not?

A. The record shows him to have been present.

4622 Q. Can you state whether Mr. W. W. Campbell was present at the meeting and if so whether he represented any organization at the time?

A. So long an interval of time has elapsed and so many conferences have since been held that I can not testify from memory as to the attendance of any individual or individuals at the meeting. I am generally painstakingly careful in making a record of attendance, and have every reason to believe that those shown to have been present were present.

Q. Does the record show Mr. Campbell as having been present?

A. The record shows Mr. W. W. Campbell as having been present and as president of the National Builders Supply Association.

4624 Q. Does the record, as you see it before you, refresh your recollection as to the subject of discussion at the meeting?

A. In a general way it does.

Q. What was that subject, the principal subject?

A. As I recall it, the members of the National Builders Supply Association had represented to the railroads that they were in difficulties because of a demoralization arising from the fact of the use of unregulated transportation means that had made it impossible for them to know what the cost of transportation might be and made it impossible for them to determine—

Mr. Zimmerman (interrupting): Will the Examiner permit an interruption? I do not want to discourage the witness in any way, but if this matter is set forth in these minutes, if he is testifying now as to the substance of the minutes, then I think that the minutes would be the best evidence. If he is testifying simply to the matter of his general recollection on a conversation, he should state the time and the place and the persons present. If he is stating his recollection of some written communication, the written communication would be the best evidence. I think the answers are not the best evidence, and the
4625 witness perhaps can point out if he desires to do so what the best evidence that he knows of on the subject is, and then we can get at it.

Mr. MacIntyre: If your Honor please, it appears to be simply a matter of supplementing the best evidence in this case.

Examiner Norwood: I do not understand that a memorandum of an informal meeting is the best evidence of what happened at that meeting, do you? There are certain facts that may be evidenced by certain papers, and they may be shown by the witnesses in many ways.

Mr. Leisure: I think that there should be some preliminary questions as to who made the statements.

Examiner Norwood: I think I will overrule the objection and let the witness complete his answer. Read his answer up to this point.

(The answer is read.)

Examiner Norwood: Go ahead and finish your answer.

The Witness (Continuing): Determine what prices would be necessary to quote in order to meet competitive conditions. That states the situation in a general way. I believe the memorandum which I prepared for Mr. Collyer for purposes of our files to reflect what transpired.

4626 By Mr. MacIntyre:

Q. The means of transportation to which you have just referred, was what type?

A. Largely truck, but also water.

Q. Both truck and water?

A. Yes.

4627 Q. To come again to your recollection as to the statements made at and about the time of the meeting by the persons who attended the meeting and concerning the instability and demoralization of markets to which you have referred, what was stated to be the meaning of those two terms as used at the meeting?

A. The discussion was of a general type, as I recall it, and while it is difficult to disassociate the discussions at the meeting with conversations that may have taken place at and about the same time, I believe it was generally a state of uncertainty because of the fact that nobody knew what individual transportation charges might be, while on the other hand—

Q. (Interrupting) Pardon me. When you say transportation charges, were you referring to transportation charges for transportation of a particular type, whether by rail, water or otherwise?

A. Whether the transportation charges might be by truck or by water. The transportation charges by rail were and are published in tariffs on file with the Interstate Commerce Commission and are available to everybody. At that time, especially in the case of the trucks, nobody knew what the charges were or were likely to be for any period of time.

Q. How would that have to do with the demoral-
4628 ization and instability of markets to which you have referred as was stated at the meeting of the persons attending?

A. My recollection of that is not clear because I do not believe it was specifically dealt with, because there was a

general understanding on the part of everybody as to the situation.

Q. You were included as having that same understanding with the others, so what was your understanding of the terms "instability" and "demoralization" as used in the discussion about the transportation of portland cement?

4629 A. I do not know the pertinence of it in this particular case, but it is a situation which developed not only with respect to this particular commodity, but with respect to business in general, and it may be that my recollection of the meeting may be confused with other things arising at the same time. In various lines of industries where quotations were made on a delivered basis, they were supposed to represent the f. o. b. factory price plus the cost of transportation, and the man who was obliged to pay a higher transportation cost was required to absorb the difference in the freight charges. Where this difference became excessive, it meant that the manufacturer might be required if he desired to compete in the market, to shrink his profits, and sometimes forego them, that with relation to other commodities along the Atlantic seaboard brought about an entire change in the sources of production and reflected itself in a general way in the so-called demoralized market.

Q. How about the quotations f. o. b. mill when deliveries were made to truck at the mill with the buyer sending his own truck and taking a mill price on it, could that apply then?

A. You are asking me now for my personal understanding of things or what transpored at the meeting?

Q. As stated by those attending the meeting.

4630 A. That may or may not have been discussed at the meeting, but I believe again, as in the case of other industries, the absence of a firm knowledge as to the cost of transportation by means other than the railroads brought about a condition of distress quotation and instability. I cannot say—

Q. (Interposing). When you use the term "distress"—

Mr. Leisure: (Interposing) Please let him finish, Mr. MacIntyre.

Examiner Norwood: Let him finish his answer.

The Witness: I am speaking now of something which is rather nebulous in my mind and with no certainty that that

was absolutely stated at the meeting. The railroads are in constant discussion with their shippers and receivers in an effort to adjust freight rates to meet conditions and enable the free movement of traffic, and it is possible that many of these things which I have stated are the result of a recollection running back either prior or subsequent to that meeting as well as at the meeting itself.

Mr. Leisure: You mean receivers of the freight?

The Witness: Receivers of the freight, yes.

By Mr. MacIntyre:

Q. As to this term "instability," did you have that to apply in your mind as was stated at the meeting, to varying quantities in which material was sold, or varying prices at which cement was sold?

4631 A. Well, as I regard the term "instability," it was the term "uncertainty."

Q. Of price?

A. Uncertainty of all elements that enter into the final price to the consumer.

Q. That is at the delivery point?

A. The delivered price.

Q. It is to such a situation as that that you applied, as you understood them to be applied, the meanings of the terms "demoralization" and "instability?"

4632 The Witness: I should say uncertainty as to all of the elements entering into the cost of production and transportation.

By Mr. MacIntyre:

Q. Why the need for certainty as discussed at this meeting of the cost of production and transportation?

4633 The Witness: Speaking now from my personal standpoint and my understanding of what took place, and without recollection of what individual statements were made, I should say that it was a case of business men who wanted to know in a state of uncertainty where they were headed for.

By Mr. MacIntyre:

Q. As to what?

A. As to ability to know definitely the elements that they were called upon to meet in producing and distributing the commodities in whose purchase and sale they were engaged.

Q. In connection with their quoting delivered prices?
A. As to the details of individual industries, I am not in a position to say. I am speaking now in a general way from recollection.

4634 EVERETTE MacINTYRE, was called as a witness on behalf of the Commission, and having been previously sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1043 A and B as documents furnished to him by Mr. J. L. Eysmans, Vice President of Traffic of the Pennsylvania Railroad on May 30, 1932, and the selection of the same has been made from Mr. Eysmans' files; Com. Ex. 1043 C and D as papers furnished to him by Mr. H. L. Baird, official of Nickel Plate Railroad in Cleveland, Ohio on March 25, 1932; Com. Ex. 1043 D and E as photostats of papers furnished to him by Mr. Ed C. Kenny, Executive Secretary of Ohio Builders' Supply Association on April 1, 1932; Com. Ex. 1043 F as a photostat furnished to him by Mr. G. G. Early of Wabash Railroad Company, St. Louis, Missouri on March 4, 1932. The
4635 witness believes he can make one statement which will apply to all these papers, that is, examinations were made of the papers or files of papers in the offices "of these gentlemen" and selections were made during those examinations. In the case of the photostats, except those furnished by Mr. Early of Wabash Railroad Company, they were made from papers furnished and the originals returned. In Mr. Early's case he furnished photostats of the papers selected. The other gentlemen furnished papers as selected or copies of the papers as selected; Com. Ex. 1043 G as a photostat of a paper furnished to him by Mr. Ed C. Kenny of Ohio Builders Supply Association, April 1, 1932; Com. Ex. 1043 H as a paper furnished by Mr. Eysmans of Pennsylvania Railroad on May 30, 1932; Com. Ex. 1043 I, J and K as photostats furnished to him by Mr. Early, of Wabash Railway on March 4, 1932; Com. Ex. 1043 L as a photostat of a paper furnished to him by Mr. E. C. Kenny of Ohio Builders Supply Association on April 1, 1932; Com. Ex. 1043 M, N and O as photostats fur-

4636 nished to him by Mr. Early of Wabash Railway Company on March 4, 1932; Com. Ex. 1043 P, Q, R and S as papers furnished to him by Mr. Eysmans of Pennsylvania Railway Company on May 30, 1932; Com. Ex. 1043 T as a paper furnished to him by Mr. Baird, of Nickel Plate Railroad on March 25, 1932; Com. Ex. 1043 U and W as papers furnished to him by Mr. Eysmans of Pennsylvania Railway on May 30, 1932; Com. Ex. 1043 X as a paper furnished to him by Mr. Baird of Nickel Plate Railroad on March 25, 1932; Com. Ex. Y as a paper furnished to him by Mr. Eysmans of Pennsylvania Railroad on March 30, 1932; Com. Ex. 1043 Z as a photostat of paper furnished to him by Mr. Kenny of Ohio Builders Supply Association on April 1, 1932; Com. Ex. 1043 AA as a paper furnished to him by Mr. Baird of Nickel Plate Railroad on March 25, 1932; Com. Ex. 1043 BB and CC as papers furnished to him by Mr. Eysmans of Pennsylvania Railroad Company on May 30, 1932; Com. Ex. 1043 DD as a photostat of paper furnished to him by Mr. E. C. Kenny of Ohio Builders Supply Association on April 1, 1932; Com. Ex. 1043 GG as a paper furnished to him by Mr. Eysmans of Pennsylvania Railway Company on May 30, 1932; Com. Ex. 1043 EE and FF as papers furnished to him by Mr. R. N. Collyer,
4637 President of Trunk Line Association, 143 Liberty Street, New York, on May 11, 1932; Com. Ex. 1043 HH as a paper furnished to him by Mr. Eysmans of Pennsylvania Railroad Company on May 30, 1932; Com. Ex. 1043 II as a paper furnished to him by Mr. Collyer of Trunk Line Association on May 11, 1932; Com. Ex. 1043 JJ as a paper furnished to him by Mr. Baird of Nickel Plate Railway Company on March 25, 1932; Com. Ex. 1043 KK as a paper furnished to him by Mr. Eysmans of Pennsylvania Railway Company on May 30, 1932; Com. Exs. 1043 LL, AAA, QQQ, SSS, TTT, WWW, 4K, 4Q, 4R, 4V, 4W and 4X as papers furnished to him by Mr. Baird of Nickel Plate Railroad on March 25, 1932; Com. Exs.
4638 1043 MM, VV, WW, EEE, FFF, JJJ, KKK, LLL, MMM, PPP, RRR, 4J, 4L, 4M, 4N, 4P, 4S and 4T as papers furnished to him by Mr. Collyer of Trunk
4639 Line Association on May 11, 1932; Com. Ex. 1043 NN, OO, RR, SS, UU, XX, YY, ZZ, BBB, CCC, DDD, GGG, HHH, III, NNN; XXX, YYY, AAAA, BBBB, CCCC, DDDD, FFFF, GGGG, OOOO, YYYY, ZZZZ, 5A, 5B, 5C, 5D, 5E, 5F, 5G, and 5H as papers furnished to him by Mr.

Eysmans of Pennsylvania Railroad Company on May 30, 1932; Com. Ex. 1043 PP, QQ, OOO, UUU, VVV, ZZZ, HHHH, IIII as photostats of papers furnished to him by Mr. Ed C. Kenny, Executive Secretary of Ohio Builders' Supply Association on April 1, 1932. He believes that accounts for all of the papers in this group handed to him.

He says that all of the papers that he has just identi-
4640 fied relate to the motor truck transportation of Portland cement.

Mr. Wooden: That is agreeable to me. Now, I offer in evidence, your Honor, at this time, Exhibit 1043-A to 5-H's inclusive, which have just been identified by the witness.

4641 "Mr. Paust: In behalf of the Lehigh Cement Company and in response to the three subpoenas which
4642 were served upon officials of that company, I have here some additional papers which were found in our files, and which I would like to produce at this time. I now proffer a file of papers bearing the legend "L. P. C. Co., No. 1, March 29, 1938," and I proffer these papers to your Honor upon the same basis as the previous papers which we have produced.

Examiner Norwood: Let them be marked for identification as Commission's Exhibit 1044-A to blank. They are received with the same understandings and exceptions and objections."

(Each document thus produced was marked for identification as indicated by the directors of "Examiner Norwood.")

4643 Washington, D. C.,
Wednesday, March 30, 1938.

4644 "Mr. Leisure: Before we got into that, Your Honor, can I offer something that I intended to offer yesterday?

Examiner Norwood: Yes.

Mr. Leisure: I have 22 sheets here from The Cement Institute.

Examiner Norwood: That is produced under the subpoena duces tecum?

Mr. Leisure: Yes. I intended to tender these yesterday but they escaped my attention.

Examiner Norwood: Mark them for identification Commission's Exhibits 1045-A to W.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Leisure: On the proffer yesterday, Your Honor, 1043-4E is not marked. We do not have such an exhibit, but there is an exhibit here that is not marked and I wondered if that could be the exhibit. We have the correct number of papers but we do not have
4645 anything marked "1043-4E."

Examiner Norwood: That might be it, then.

(Discussion off the record.)

Mr. Leisure: In other words, there is no 1043-4E identified in the record. Apparently they skipped that in numbering them.

Examiner Norwood: That paper we do not have is evidently 4E.

Mr. Wooden: There is supposed to be one there.

Examiner Norwood: Let the reporter mark it 1043-4E.

EVERETTE MacINTYRE was recalled as a witness for the Commission and, having been previously duly sworn, was examined and testified further as follows:

Direct Examiner by Mr. Wooden.

Q. I am handing you, Mr. MacIntyre, a paper marked 1043-4E for identification. It was among those you looked at yesterday, I understand, but did not have a number at that time. Will you state where that paper came from and what you know about it?

A. This is a paper that was furnished to me by Mr. H. L. Baird, of the Nickle Plate Railroad, on March 25, 1932.

4646 Mr. Leisure: As to this entire group of exhibits, I believe, consisting of 112 exhibits, I wish to state certain general objections and then take them up specifically with your Honor subsequently.

4647 As to the entire group, I say that the exhibits are irrelevant, immaterial and incompetent. They have not been properly identified and no foundation has been laid for their admission. They comprise communications

between third parties not connected with any of the respondents and having no power to bind the respondents in any way. They are in no way binding on any respondents named in the pleadings. They are copies of purported communications. They are not originals. They do not contain any original signatures. Many of them contain no subscriptions or copies of subscriptions whatever. They are not the best evidence of the contents that they purport to convey.

The declarations and entire contents of these papers are hearsay and are not within the exceptions to the hear-
4648 say rule. The respondents are entitled to the right of cross-examination of the various authors of these purported communications and unless they are introduced through witnesses having knowledge of the fact of the writing and knowledge of the contents, respondents will be deprived of their very substantial right to cross-examine witnesses having knowledge of the facts.

These exhibits are offered through the witness MacIntyre, and all of his testimony with respect thereto, except in so far as it relates to where he found the papers, is hearsay.

4649 The first one that I specifically object to is that of 1043-A. That is a letter by Mr. W. W. Campbell. The letter is on the stationery of the Campbell Company, showing that it is a personal letter, and it is addressed to those in charge of traffic on the railroads. It seems to be kind of a circular letter of some kind.

Examiner Norwood: Mr. Campbell is a cement dealer?

Mr. Leisure: Mr. Campbell was the gentleman who testified yesterday.

Examiner Norwood: President of the dealers' association?

Mr. Leisure: There is no evidence in the record that this letter is written by the same gentleman who was on the witness stand, however. I am merely surmising that he is the same individual. It is signed W. W. Campbell and I pointed out that it is written on a personal letterhead and it does not appear that he wrote it as a member
4650 of any association; so that I specifically object to that exhibit.

Examiner Norwood: That is 1043-A?

Mr. Leisure: Yes, sir.

Examiner Norwood: Now, are there any others that are specifically objected to?

Mr. Leisure: Your Honor, there are so many of these that will require that kind of attention, that I wonder if counsel could not take them back and renew his offer on those on which he believes he has some legal justification for offering them in evidence. There are so many of them that are written by third parties to third parties—

Examiner Norwood: (Interposing.) He probably believes he has a legal justification for offering them all.

Mr. Leisure: I do not think that can follow in this case. Let me call your Honor's attention to the next one—and there are dozens of them to the same effect. This is written by a gentleman by the name of Stevens, who describes himself as general freight agent, written to R. A. Williamson. It does not appear who Williamson is or who Stevens is. I do not see, if we are following any rules of evi-
4651 dence, how counsel can contend any basis has been laid for offering those letters in evidence. This shows, written on the back, "Taken from the files"—I suppose it is the Commission's code number—36-67-4.

Now, there are literally dozens of exhibits of that character, and I was wondering if we could not save time by having counsel select out—he is an attorney and I am sure knows when some basis has been laid for offering an exhibit in evidence and I do not believe any one could seriously contend there has been any basis laid for offering an exhibit of that kind in evidence in any kind of proceeding—

Mr. MacIntyre: (Interposing.) If your Honor please, as to these gentlemen by the names of Stevens and Williamson, the names shown on this particular paper and referred to by Mr. Leisure, have their titles and the organizations with which they are connected, on a document that was described yesterday by the witness Gottschalk, on the circular letter that he was talking about, that he prepared and sent to those gentlemen. So, it is in the group, and that again shows the necessity of offering these as a group, in order to identify one person who has written one letter as against the person who wrote another. It is difficult to separate them for that very reason among
4652 others.

Mr. Leisure: Counsel is addressing his contention as to the necessity of proving his case. I am talk-

ing about if we are following any rules of evidence whatsoever. If we are, there must be some foundation laid for offering letters of third parties in this proceeding.

Mr. Wooden: Mr. Leisure is right in saying that these letters were not offered without thought. Considerable thought has been given to it and considerable research made. We produced the witnesses yesterday to lay the foundation for the introduction of these papers.

The Witness Campbell, an official of the National Builders Supply Dealers' Association was called, and according to his testimony, meetings were held attended by representatives of the railroads and representatives of the Cement Institute. The president of the Cement Institute was present and at these meetings they discussed this problem of trucking and what to do about it. All three groups had certain interests to serve, not necessarily identical, but they were united upon the view that something had to be done to limit or reduce the amount of trucking of cement. The railroads had the natural interest of desiring to in-
4653 crease their traffic which had gone to the trucks; the dealers and manufacturers each had the objective of maintaining what they call price stabilization.

Now, all those things, of course, bring the subject of these papers in as relevant and material. The only question that I see that can be raised is whether they are admissible as competent evidence.

Now, on that point, the law seems to be clear, as I understand it—and I have looked into it somewhat to verify previous expression that I had—that it is not necessary that all parties who engaged in a certain concert of action be proceeded against in order to make the acts and declarations of parties not proceeded against admissible against the others.

Now, that is true not only a civil case, but it is true in criminal cases. Let me call your attention to some of the statements under criminal law on the subject.

4654 Examiner Norwood: Does the respondents' counsel object to the identification of these exhibits? Several of the points that you have raised, we have disposed of already in principle, such as going into the N. R. A. matters and matters prior to that time.

Mr. Wooden: I have addressed myself only to the one point of the competency of these papers, the admissibility. I think the others are pretty well disposed of.

Examiner Norwood: We have let in testimony here from these other actors in this thing. There may be other reasons, and one is that it throws light on the effects.

Mr. Leisure: Your Honor, I think counsel is taking us off into another field. He is reading the substantive law, and I am talking about evidence.

(Discussion and argument off the record.)

Examiner Norwood: So far as 1043-4S, 4T, and 4U, I am going to receive them now. If in studying the record and studying the exhibits I find they are in the
4655 same category, I will take them all in.

((COM. EX. 1043-4S, 4T and 4U were offered and received in evidence.)

Mr. Leisure: As to 1043-AA, it is a seven paragraph letter on one page, and only the first paragraph has anything to do with cement in any way. The rest of the
4656 letter is in connection with other matters. The fifth paragraph at the bottom of the letter, including the postscript, has nothing to do with cement at all. The paragraph which does mention cement shows on its face that it is hearsay, for instance, one sentence states "If most large manufacturers would do so-and-so". Clearly we should have the right to ask the man who writes a letter of that kind when it is offered in evidence against us, where he got the information, what manufacturer told him that, whether all of the manufacturers in the country told him that, what specific manufacturers he had in mind.

At another place in that paragraph, the author of the letter states, "One of the largest manufacturers of cement told a trucking concern so-and-so". That is clearly hearsay. We have the right to ask the witness when, where and under what circumstances that largest manufacturer told the trucking concern those statements, and whether or not he heard it personally, would be hearsay if he did. The proper procedure then would be to call the participants so that we can cross-examine them and ask them why they made such remarks if they are harmful to the respondents in this case.

4657 As to 1043-D and E, that is a letter written by a gentleman who signs himself Joseph L. Alcorn, and it is signed as president of the Alcorn-Hahn Supply Company, and it is addressed to a gentleman by the name

of Kenny, the secretary of the Ohio Builders Sup-
4658 ply Association. There is a postscript and the same appears to be in the same writing as the signature —I am not sure whether it is—but it says "Please publish this letter in your bulletin." The letter does not mention cement at any place in the letter. So here is another example of correspondence between third parties being introduced in evidence against the respondents in this case.

4659 1043-F is a letter not written on any letterhead. It is signed "Assistant General Freight Agent," and addressed to a man by the name of G. G. Early in St. Louis, Missouri. I think it is signed "J. Mossman." I am not sure of the signature. It appears to be a rubber stamp signature and the character of the letter is also one of hearsay. It says, "From what we can find out," etcetera. Surely, we should have the right, if this man's statements about us are going in evidence, to question him on the witness stand as to what his motives were in writing such a letter.

4666 The next is a photostat of a letter. It is 1043-O. It is written on the letterhead of the Wabash Railway Company and signed by Mr. Frank Gage and also addressed to Mr. G. G. Early of the Wabash Railway. The initials on the side are "E. D. T. :R. E.", indicating that it was signed by someone else other than Mr. Gage. It does not look like a man's handwriting.

4670 JACOB GOTTSCHALK, a witness previously sworn, was recalled to the stand and testified further as follows:

Cross Examination by Mr. Leisure.

Q. Mr. Gottschalk, I show you Exhibit 1043-SSSS, and ask you if that exhibit was prepared by you?

A. (After examining) That exhibit was prepared by me personally, yes, sir.

Q. And did you attend the meeting that is described in the exhibit?

A. I attended the meeting described in the exhibit.

Q. Did you participate in the discussions at the meeting or were you there in some other capacity?

A. I did not participate in the discussions.

4671 Q. In what capacity were you there?

A. Merely to record the proceedings of the meeting.

Q. Keep the minutes of the meeting?

A. Yes, sir.

Q. How long after the meeting did you write that summary?

A. It was written either the same day or the next succeeding day. To the best of my recollection it was written the same day.

Q. What did you do with the report after you prepared it?

A. Merely placed it upon our file as a memorandum.

Q. Are you personally acquainted with Mr. D. H. McFarland?

A. No, sir, I am not, other than the fact that he was present at the meeting, but I do not believe I would know the gentleman if I should meet him now.

Q. I observe you have listed him as president of his company.

A. That was the information that was furnished me at the time of the meeting.

Q. I am sorry, I did not read that correctly. You have listed him as president of the Cement Institute.

A. That was the information that was furnished to me at the time. It is customary at our meetings to ask one of the gentlemen present to let me have a memorandum of those who are present representing any particular industry, with whom I am not personally acquainted.

4672 Q. Did you say that you attended also a meeting in Philadelphia after that?

A. The meeting in Philadelphia was that of January 7, 1932.

Q. That is the one you have just been describing?

A. That is the meeting I have just described.

Q. I show you another exhibit, 1043-EE and FF, and ask you whether or not you have ever seen that before?

A. (After examining.) That is a circular which is distributed by our office and prepared either by Mr. Collyer or by myself or jointly. It is difficult to recall at the moment.

Q. What were the circumstances, Mr. Gottschalk, under which that was distributed?

A. There had been a conference between certain representatives of the National Builders' Supply Association, I believe it was, and certain of our traffic executives, held in New York, I believe, on July 22, 1931. I believe that that is the meeting which I attended, but until I examine certain other memoranda, I would not like to say under oath that I did attend that meeting of July 22nd. I am under the impression that I did.

Q. And subsequently, this memorandum was prepared either by Mr. Collyer or by yourself?

A. Yes, sir.

4673 Q. Is Mr. Collyer your superior?

A. Yes, he was chairman of the association and I was secretary of the Traffic Executive Committee.

4675 (COM. EX. 1043-EE and FF was offered and received in evidence.)

4677 Examiner Norwood: Go ahead with your objections.

Mr. Leisure: The next letter, Your Honor, is that of the president of the Baltimore & Ohio Railroad. That is 1043-R. It is a copy, no original signature, and he is writing a letter to Mr. Campbell. I would say there has been no basis laid for the offer against the respondents.

The next exhibit is 1043-S. It is a letter on the letterhead of the Chesapeake & Ohio Railroad Company

4678 signed by Mr. J. J. Bernet, President, dated June 26, 1931. It, too, is a typewritten copy. It is addressed to Mr. W. W. Campbell, President of the National Builders Supply Association. I submit, Your Honor, that until someone identifies the letter in some way, there is no way of offering it in evidence here. Mr. Campbell was on the stand but he was not asked to identify or in any way describe any of these letters.

1043-T appears to be a memorandum signed by R. A. Williamson. It is a typewritten copy dated June 27, 1931. It is not connected up in any way with the case. It is just a typewritten copy. The Commission code number on the back says "Taken from File 3167-4". There is nothing on the face of the letter which shows whether or not it was read by anyone else other than the author of the letter.

4679 1043-X is another memorandum typewritten, and has the typewritten signature of a R. A. Williamson,

addressed, apparently, to Mr. J. H. Day. It is dated July 3, 1931. Cement is not mentioned in the letter
4680 and I have not the slightest idea what it is about. If it had anything to do with respondents, I would like to know something about it before it is received in evidence. There is considerable pencil writing in one corner. If it is to be offered, it should be explained or, in some way, identified.

4684 Mr. Leisure: The next exhibit I wish to direct your attention to is that of 1043-Z. It is a photostat dated July 20, 1931. It has no signature. There is a typewritten place for a signature and under the line there is writtten "Executive Secretary." The initials at the side are "E. C. K. :H. C." It is addressed to Mr. W. W. Coney, Moores-Coney Company, Cincinnati, Ohio. If the gentleman who wrote the letter is a respondent, we do not know it. There has been no foundation laid to that effect. I am certain that the recipient of the letter, W. W. Coney, is not a respondent, nor is he authorized to receive letters on behalf of respondents.

4685 Mr. Leisure: Next, your Honor, is a letter or paper, I should say, 1043-AA, and it appears to be a mimeograph one-page document.

Mr. MacIntyre: The testimony of yesterday shows that this particular document was secured from Mr. H. L. Baird, an official of the Nickel Plate Railroad, of Cleveland, Ohio, on March 25, 1932. It shows on its face it is a memorandum of a conference of the trunk line executives in New York and is in mimeographed form, showing it related to the trucking of building materials and present at the conference were W. W. Campbell, of the National Builders' Supply Association, Mr. E. J. Holway of the Youngstown Ice Company and D. H. McFarland, of the Medusa Portland Cement Company.

Mr. Leisure: I do not think it is proper to read
4686 an exhibit that is not in evidence in that way. There should be a basis for offering it in evidence before it is read.

Examiner Norwood: Well, he is just giving the information in regard to it.

Mr. MacIntyre: Not a letter from the body of the document has been read.

Examiner Norwood: Necessarily, I will have to read the paper to determine whether it should be received, and it has not done any harm to read a part of it.

Mr. Leisure: The next exhibit is 1043-BB. It appears to be a carbon copy. It is dated Philadelphia, July 23, 1931, and purports to be signed, or there is a typewritten signature, of J. B. L., and it is addressed to J. L. E. Whether J. B. L. or J. L. E. are respondents in this case, I do not know. There has been no proper basis for the papers being offered in evidence.

4688 Mr. Zimmerman: At this point, may I refer to 1043-AA for a moment? That document purports to be an extract from a memorandum of the conferences or a conference. It does not even purport, on its face, to be the minutes of the meeting or a memorandum made at the time of the meeting by any particular person. There is no showing as to who made the minutes from which this presumably is taken and no showing as to who made the extract therefrom.

It gets down to one point further removed from any possibility of a contemporaneous document for which a proper foundation has been laid and that is an added objection to it.

Mr. Leisure: The next exhibit is 1043-DD. It is a photostat dated July 25, 1931. It is without signature. It has a typewritten ending as follows:

"Ohio Builders Supply Association by (blank), Executive Secretary."

In the left-hand side are the initials "ECK:HC." It is addressed to Mr. W. T. Starr, Cambridge Lumber &

4689 Coal Company, Cambridge, Ohio. There has been no basis laid for offering the letter either as to the writer or as to the recipient of the letter. It states hearsay. A witness could not testify to the contents of the letter if he were on the stand. It states in one paragraph that cement manufacturers are trying to do certain things. We would like the opportunity of finding out what manufacturers are doing it. As the letter reads now it might appear to someone reading it in the record, that all manufacturers in the country did this. I doubt if cross-examination would bear that out.

4692 The next exhibit to which we specifically object, in addition to the general objections which I stated this morning, is 1043-II. It is also a typewritten letterhead and signature. It purports to be signed by J. H. Day, vice president, traffic, and it is addressed to R. N. Collyer, chairman, Trunk Line Association. It is on the typewritten letterhead of the Nickel Plate road.

I submit that Mr. J. H. Day, as vice president, I assume, of the Nickel Plate—and I can only surmise that because there has been no evidence to indicate who Mr. Day is or what his connection is—I submit that he is not authorized to bind any of the respondents in this way.

4693 Mr. Leisure: The next exhibit to which we specifically object is 1043-KK. It is also a typewritten copy. It is designated "Copy" in the left hand corner, and in the right hand corner is written "Exhibit 35" in type-

4694 writing. It purports to be signed by J. L. E. It is headed "Memorandum." It is not addressed to any one who J. L. E. is, but until the party is designated by witnesses from the witness stand, rather than by statements of counsel, I submit it is not properly offered in evidence at this time.

Mr. MacIntyre: I should like to note for the record at this time, if your Honor please, that 1043-KK, this paper, was furnished to me by Mr. J. L. Eysmans of the Pennsylvania Railroad Company and in the form in which this document now appears. It was his thought at the time selections were made from his files, that he did not want to furnish all of the selections, but he would like to furnish copies that he would make and compare. In some instances he had in his files duplicates that he had received from other sources. In those cases he turned the paper over to us without making copies. This happens to be one that he had only one copy of in his files.

Mr. Leisure: I do not know the purport of counsel's statement unless since this letter came from the files of the railroad company, they are admissible in evidence against respondents in this case. If that is so, that means that he is including in his case a charge of conspiracy against all the railroads in this country and all the cement

4695 companies in this country, and I take it would include the 300,000 dealers in this country. I should like to get that narrowed down as to what it covers, if that is the purport of counsel's staemen.

Mr. Eysmans was on the stand and the exhibit was not shown to him and was not identified.

Mr. Wooden: So far as the subject of trucking is concerned, your Honor, that is the theory on which these papers are offered; namely, that these three groups in organized fashion, did co-operate and work together for the purpose of restricting the trucking of cement, and it so happens that the case or complaint is

against only one of the three groups; nevertheless, the activities of the other two groups, in collaboration with the group against which the case is brought, under the principles of law I enumerated this morning, makes them admissible against the group against which the case is brought.

4696 Mr. Leisure: Unless counsel is willing to go the whole way in making the charge that they are conspirators, and if he charges they are conspirators, even then their statements would not be admissible against the respondents in this case—

Examiner Norwood: He can establish a conspiracy for its bearing in the matter of admission of evidence. He can do that, outside of the complaint.

Mr. Leisure: It is my understanding that he can not do that by hearsay evidence, and as to statements supposedly by conspirators, which he read this morning under the Texas case and some others in Corpus Juris, that evidence can not be received as evidence of conspiracy.

Examiner Norwood: No, that is true.

Mr. Wooden: But we laid the foundation in the testimony of the witnesses yesterday about these activities and in general about the communications which we now offer and I further say that it is not in the category of inadmissible hearsay if the parties, whose declarations are involved, were, as a matter of fact, in cooperative activities with the respondents, which is one of the issues and one of the subjects which the complaint covers specifically. I mean by that, trucking.

4697 Mr. Leisure: The next exhibit to which we specifically object is 1043-LL; it also is a typewritten copy of a letter or memorandum,— I can not tell which,— it has a typewritten signature J. H. Day; it is not addressed to anyone; it is dated August 7, 1931. I do not know who Mr. Day is. I submit unless it is shown he has some authority to speak for these respondents, that the letter is inadmissible.

4698 Mr. Leisure: The next exhibit is 1043-MM and we object to it on the ground it is a carbon copy; the letterhead itself is a typewritten copy and the signature is a typewritten signature; it is dated August 11, 1931; it purports to be signed by one Nat Duke, vice president,

4699 —I can only assume he is vice president of the Delaware, Lackawanna & Western Railroad Com-

pany,—from the typewritten heading of the letter. There has been no testimony identifying it. It is addressed to Mr. R. N. Collyer, Chairman, Trunk Line Association. This is another example, Your Honor, of letters between two third parties, and neither of the third parties being called in the courtroom, and a typewritten letter at that, being offered in evidence in a judicial proceeding.

Mr. Leisure: The next exhibit to which we specifically object is 1043-NN. It consists of two pages, 1043-NN and 1043-OO. It, too, is a typewritten copy,
4700 and is so designated at the left-hand corner as a copy. At the right-hand side is written in typewriting "Exhibit 34-First." It purports to be a memorandum of a conference in the office of the Bessemer Portland Cement Company, Youngstown, Ohio, August 13, 1931; the Bessemer Company at that time is not a respondent in this case. It is not signed by anyone and there has been no basis laid for its offer in evidence in this case.

4702 Mr. Leisure: The next exhibit to which we specifically object is 1043-PP; it is a photostat; it is without signature; the letter ends as follows: "Yours very truly, Ohio Builders' Supply Association," by "blank", "president." It is addressed to a Mr. V. R. Corrou, secretary, New York State Builders' Supply Association.

We submit there has been no basis laid for offering a photostat of this character in evidence in this case,—correspondence between two building supply
4703 associations.

The next exhibit we object to is 1043-QQ; is it also a photostat; it is dated August 22, 1931; it is without signature; purports to be also addressed to Mr. Carrou, and is apparently also a letter between the Ohio Builders' Supply Association and the New York State Builders' Supply Association. We make the same objection to this exhibit that I did the preceding one.

4707 Mr. Leisure: The next exhibit to which we specifically object is 1043-VV and 1043-WW, which appear to be, your Honor, a mimeographed copy, has a mimeographed signature of one W. W. Campbell, and is addressed to Mr. Eysmans and a group of some 10 or 12 people with their titles and names.

The second page starts with "Dear Sir," and ends with "Sincerely yours, Manager," without signature. Mr. W. W. Campbell was on the stand, was not called upon to

identify this document; no foundation has been laid for its offer in evidence, and we object to it.

4709 Mr. Leisure: The next one is 1043-YY. That is also a typewritten copy and is so designated in the left-hand corner and has typewritten "Exhibit 33" at the top. It has a purported typewritten signature of H. C. Oliver, without designation. It is addressed to no 4710 one. It is "To J. B. L." It is dated August 20, 1931.

I submit there has been no showing which would entitle it to be received in evidence in this case.

The next exhibit is 1043-AAA. It appears to be a mimeographed copy of the Traffic Executives Association, Eastern Territory, 143 Liberty Street, New York, addressed to the Vice Presidents of a number of railroads and is signed "Yours very truly, R. N. Collyer, Chairman," also in typewriting. In other words, it appears to be a communication between railroad officials.

The railroad officials have not been called to identify the document and I submit it has not been properly identified so as to be received in evidence.

4713 Mr. Wooden: All of that, your Honor, depends upon whether or not these documents constitute declarations or admissions of parties who were engaged in a common line of activity with the respondents.

Examiner Norwood: And if it so appears, they would be admissible under your contentions as admissions?

Mr. Wooden: Admissions against all.

Mr. Leisure: If properly produced and identified in a court room.

Mr. Wooden: I am glad to get it clear that we are getting to the point where the objection runs to the identification itself rather than admissibility after being identified. If it is charged that we were making a short cut on the identification, we concede that.

Examiner Norwood: No, their objection is to the admissibility as stated heretofore on all the points that have been stated.

Mr. Leisure: The exhibits are not only bad be-
4714 cause they are not properly identified, but for all the other reasons stated.

Mr. Wooden: I understood you to say they would be admissible if otherwise identified properly.

Mr. Leisure: An admission by the parties would be admissible, but that has not been shown, unless you want to amend your complaint to include all the railroads.

Mr. Wooden: I read the law to show that it is not necessary to join all of the co-conspirators.

Mr. Zimmerman: I understood Mr. Wooden to make some remark to the point that these things would be binding upon all respondents. Was that correct?

Mr. Wooden: Yes.

Mr. Zimmerman: May I ask, would that contention apply to respondents who were not members of the Institute at that time?

Mr. Wooden: I do not know how to answer that question right off the bat, but I would say it would apply to all present respondents who engaged in similar activities in connection with trucking.

Mr. Zimmerman: What I had in mind was this; As an example, the Marquette was a respondent here, but not a member of the Institute until along about June or July, 1933.

Examiner Norwood: Suppose it is a conspiracy
4715 and suppose they join the conspiracy later on?

Mr. Zimmerman: I did not hear that. Will the reporter please read that?

(The statement is read.)

Mr. Zimmerman: Well, suppose they did join the Institute later on: World it not be essential to charge them with knowledge of some wrong doing that went before, if it be wrong? You cannot assume that. That is a job they have to undertake to prove. It could not possibly be binding upon any respondent who was not then a member of the Institute or had no part in this proceeding.

Mr. Wooden: Activities in connection with trucking were a continuing thing including the time the Marquette was a member of the Institute.

Mr. Zimmerman: Would not you rather say a recurring thing rather than "continuous?"

I agree with your general principles all right, but it must be kept in mind that they must prove that there was contemplated this thing, and they must also, in some way, connect up the respondents, unless I take it as literally correct that those respondents which did not and are not shown as being any part of this performance which is being described here, would not be bound. Perhaps I had better wait on that.

4716 Examiner Norwood: I have seen instances before where evidence would not be considered against par-

ticular respondents unless they were connected up with these things.

Mr. Leisure: Mr. Wooden says those who participated would be bound by it, but here he is offering all this evidence for the purpose of showing there was a conspiracy.

Examiner Norwood: Go ahead and state the rest of your objections. I will consider all those things.

Mr. Wooden: We laid the foundation for it yesterday in the oral testimony, plus all that has gone before.

Mr. Leisure: The next exhibit your Honor is 1043-GGG. That is a typewritten copy designated as such and, in the right hand corner, is typewritten "Exhibit 25." It is a one-page document and is not signed. It is dated August 27, 1931, and appears to be addressed to a group of individuals. It has not been identified in any way by any witness and I think, if your Honor glances at it, as you consider it later, you will see that the majority of the exhibit consists of hearsay statements which could not be made on the witness stand.

The next exhibit to which we specifically object
4717 is 1043-KKK. It is a typewritten copy with the typewritten mark in the top "Exhibit 26." It has the typewritten signature of H. C. Oliver and appears to be addressed to J. B. L. The document has not been identified in any way. It appears to be a personal memorandum talking about a proposed trip to Pittsburgh.

I submit that it has had no foundation laid for its offer in evidence.

Mr. MacIntyre: If your Honor please, I would like to refer to the fact that Mr. Eysmans yesterday testified that H. C. Oliver was one of his subordinates and so was J. B. Large, and they held conferences with cement manufacturers concerning these conferences or meetings in New York, and they reported to him. I am making that observation in connection with 1043-HHH.

4718 Mr. Leisure: The next exhibit is that of 1043-III. It is a typewritten copy designated as such and is marked, in typewriting, "Exhibit 24". It is dated Pittsburgh, August 24, 1931, and has the typewritten signature of H. C. Oliver and is addressed to Mr. J. B. Large,
4719 General Traffic Manager, Freight, Philadelphia, Pennsylvania.

Here is another example of letters of third parties being offered against respondents in this case, neither of the

third parties being called to identify the document or to explain it.

4722 Mr. Leisure: 1043-LLL is a typewritten copy dated September 3, 1931, and purports to be a letter written by three railroad officials and their typewritten signatures appear to be A. Hamilton, H. S. Stauffer and John Duffy, to Mr. R. N. Collyer, Chairman. None of these gentlemen have been called to the witness stand and this exhibit in no way has been identified or made material or relevant to the issues in this case.

4723 Mr. Zimmerman: Three G's, as an additional and more pointed objection to it, that there is no showing that it was made at the time by any particular person, or that it is a memorandum made at the time in due course of business, or that there was any regular course of business, in the course of which such memoranda are ordinarily made of current events. That same objection is true of a great many,—practically all of these exhibits,—but it is well illustrated by this particular exhibit.

4726 Mr. Leisure: The next exhibit which we specifically object to is 1043-MMM, and it is a typewritten copy, dated Septemb 4, 1931, typewritten letterhead, Reading Company, Philadelphia, Pennsylvania, and it has a typewritten purported signature of E. D. Hilleary, vice president, addressed to Mr. R. N. Collyer, chairman. We make the same objections to this exhibit, specifically as between third parties, and it has not been identified in any
4727 way, and the original has not been accounted for.

The next exhibit is 1043-OOO; it is a photostatic
4728 copy on the letterhead of Indiana Builders Supply Association and purports to be signed by Hildebrand, without initials, State Secretary, and is addressed to E. J. Holway, Youngstown Ice Company; it is dated September 11, 1931; the word "cement" is not mentioned in the letter. The letter starts "Dear Friend." I submit there has been no showing which would allow the letter to be received in evidence.

4729 Mr. Leisure: The next exhibit to which we specifically object is 1043-QQQ, which appears to be an excerpt, clipped out of some larger piece of paper, and bears no signature. It appears to be a mimeographed copy rather than a typewritten copy. The heading is "49", indicating that Exhibit 48 goes before it, a conference with

National Building Supply Dealers Association, re-
4730 garding trucking situation, at the top, written on a separate piece of paper. There has been no showing as to who wrote it, because below is written Mr. MacIntyre's name on the same piece of paper; above is a typewritten copy "Proceedings at a meeting of the Traffic Executive Association, Eastern Territory, held at 143 Liberty Street, New York City, September 17, 1931."

Now, I submit, Your Honor, that that exhibit can not be offered under the statute that has been quoted so many times as a memorandum made in the regular course of business, unless the memorandum is brought within the terms of the statute, which I just want to repeat briefly, and those terms are:

The record must have been made as a memorandum or record of an act, transaction, occurrence, or event and

(2) The record or memorandum was made in the regular course of business, and,—not "or" but "and"—

(3) It was the regular course of such business to make a record or memorandum of such acts at the time thereof, or within a reasonable time thereafter.

So that just some itinerant memorandum made of a sporadic meeting, as I understand it, would not come un-
der that rule, and the latest case on that I believe
4731 is in Federal Supplement 18, the title of the case is New England Newspaper Publishing Company *vs.* United States. In that case, Your Honor, there were two statements of deceased longshoremen which were offered in evidence and taken subject to a later ruling as to the admissibility. The page on which this is stated is page 678. The first was in the form of a written report made by deceased timekeeper to his superior who did not testify. The other was in the form of an affidavit under oath of the deceased stevedore employed by Jarka & Company. These statements were excluded, the Circuit Court of Appeals stating while the admissibility,—while the courts do not adhere to strict common law rules of evidence,—this being an admiralty case,—I am not prepared to rule that the affidavit and report of persons not in the court are admissible, they do not come within the recent Act of June 20, 1936, relating to the admissibility of records.

4734 Mr. Leisure: The next exhibit is 1043-SSS. It appears to be a typewritten copy on a printed form, Central Traffic Executive Committee, Chicago, What com-

pany that refers to, I do not know. In the left hand corner is a red stamp, "Nickel Plate Road" which is a typewritten signature E. Morris, chairman. It is not addressed to any individual, but says, "Gentlemen." I submit that until the paper is in some way identified as being binding on these respondents, that it be not received in evidence.

4735 Mr. Leisure: Next, your Honor, is 1043-TTT. It again appears to be an excerpt clipped out of some larger document—a mimeograph copy of something. It starts with "55" which I assume indicates that something went before it. It has no signature and has not been identified in any way. No witness has stated that he wrote it or received it and I submit that it is not properly offered in evidence.

4739 Mr. Leisure: 1043-VVV is a photostatic copy of a letter dated October 12, 1931. It is without signature. It ends, "Very cordially yours, Ohio Builders'
4740 Supply Association, by (blank) Executive Secretary." It appears to be addressed to Mr. E. J. Holway, of the Youngstown Ice Company.

4741 The letter has not been in any way, identified by witnesses which would permit it being offered in evidence.

4742 The next is a photostatic copy on the letterhead of the National Builders Supply Association. It is 1043-ZZZ. It is dated November 11, 1931. It is addressed to a Mr. Harry N. Hansen, President, Ohio Builders Supply Association. It purports to be signed by a Mr. G. C. Murray, Secretary of the National Builders Supply Association.

4743 The next is a typewritten copy—Exhibit 1043-4B—of a letter purporting to be signed by Mr. Eysmans, to Mr. Campbell, dated November 12, 1931. I make the same objection to this exhibit as to the preceding exhibit.

The next exhibit is 1043-4D, a typewritten copy, designated as such in the left-hand corner, and is marked "Exhibit 14" in typewriting. It has the typewritten signature of H. C. Oliver and is addressed to Mr. J. B. Large, General Traffic Manager, Freight. It does not appear with what concerns either of these gentlemen are connected and there has been no testimony that Mr. Large received the letter or that Mr. Oliver wrote it.

4748 Washington, D. C.,
Thursday, March 31, 1938.

4751 Mr. Leisure: The next is 1043-4J. It is a typewritten copy on a plain white sheet of paper dated December 8, 1931. At the top of the page where the letterhead would ordinarily be, is a typewritten group of initials "T. L. A." It is addressed to Mr. W. W. Campbell and has a typewritten signature "R. N. Collyer, chairman."

This letter also has not been identified by any one and we submit is not properly identified for submission in evidence.

The next exhibit is 1043-4K, being also a typewritten copy on a plain white sheet of paper, dated December 17, 1931. It purports to be addressed to a Mr. R. A. Williamson, his title or connection not being shown on the letter. It has the typewritten signature of J. H. Day. His connection or position is not shown in the letter.

There are a number of longhand notations on the letter which have not been identified in any way. We object to the exhibit as not having been properly identified for submission in evidence.

4752 Mr. Leisure: There is no evidence, Your Honor, that Mr. Duffy wrote the letter in question.

The next exhibit is 1043-4M; also a typewritten copy. It has a typewritten letterhead "The Delaware, Lackawanna & Western Railroad Company, Traffic Department," dated December 23, 1931, addressed to Mr. R. N. Collyer, Chairman, with typewritten signature as follows: "Yours very truly, Nat Duke, Vice President." This letter has not been identified in any way as to the writer of the letter or the contents thereof, and it is not shown material or relevant in any way.

4753 Next is Exhibit 1043-4N, a typewritten copy. The letterhead is typewritten "Chicago, Indianapolis & Louisville Railway," dated December 23, 1931, addressed to Mr. R. N. Collyer, ending as follows: "Yours very truly, signed E. P. Vernia, Vice President," all in typewriting. We object to this exhibit also on the ground that the author of the letter has not been identified in any way.

The next exhibit is 1043-4O. It seems to be a portion of a document. The word "copy" is written in the left-hand corner; "Exhibit 11" in typewriting appears in the right-

hand corner. It is dated Pittsburgh, Pennsylvania, December 23, 1931. It is not addressed to any individual. There appears at the top of the memorandum the initials "J. B. L." There is a typewritten signature at the bottom "H. C. Oliver." I submit that this memorandum has not been properly identified for submission in evidence.

4754 Mr. Leisure: There is nothing to show in this exhibit, Your Honor, that "J. B. L." is Mr. Large. There is no showing that Mr. Oliver is the author of the letter although his name appears in typewriting.

The next exhibit is 1043-4Q. This is a document apparently on a mimeograph form, Your Honor. The mimeograph on the top is "Telegram, Traffic Executive Association, Eastern Territory." There is a red rubber stamp "Nickel Plate Road" in the right-hand corner. It is dated January 4, 1932, and has a typewritten signature "R. N. Collyer" and a number of pencil notes which have not been identified. It appears to be addressed to a number of

4755 railroads, seven or eight railroads. I submit that the document has not been in any way identified in a way that would allow it to be submitted in evidence.

The next exhibit is 1043-4R. It is a telegram on a Western Union blank. It is addressed to J. H. Day, vice president, New York Central and has the typewritten signature, R. N. Collyer. The body of the telegram does not mention cement in any way. There is nothing in the telegram to show that it is in any way connected with this case.

The parties have not been identified and the document has not been identified; therefore, we object to it.

4756 Mr. Leisure: 1043-4V is the next exhibit. It is typewritten on a plain white piece of paper dated January 11, 1932. It is addressed to Mr. E. Morris, chairman, Central Freight Association, Chicago, Illinois. It has a rubber stamp printed signature as follows, "Very truly yours, R. A. Williamson, Assistant Freight Traffic Manager."

Attached to this exhibit, 1043-4V, is 1043-4X, 4X being attached by means of brass brads through the two pieces of paper. There is some longhand writing consisting of five or six lines. Cement is not mentioned and there is nothing in the page of writing which would indicate in any way it is connected with this case.

There appear to be initials which I decipher as "W. S. M." I do not know whether that is correct or not, as they are difficult to decipher.

4757 Also attached to that exhibit is 1043-4W, being a full page of longhand writing. The handwriting has not been identified. There have been no witnesses to testify to the writing of the exhibits 4V, 4X, and 4W.

4765 Mr. Leisure: The next exhibit, Your Honor, is 1043-3H. It also is a typewritten copy on plain white paper designated as "Copy" in the left-hand corner and typewritten "Exhibit 26" in the right-hand corner. It is dated Pittsburgh, Pennsylvania, August 27, 1931. It is not addressed to anyone. At the top there are the initials "J. B. L." It purports to be signed by H. C. Oliver in a typewritten signature. The body of the letter or memorandum when Your Honor considers it, you will ob-

4766 serve that it contains much hearsay that the witness Oliver would not be allowed to testify to even if he were on the witness stand, over objection. It has not been identified in any way and we object to it.

4767 Mr. Leisure: Now, if your Honor please, we have made general objections to this group of exhibits and I have pointed out certain things which I hope your Honor will consider in passing on the admissibility of each one of these exhibits. I should like, if your Honor please, for the Examiner to note that before taking up these exhibits individually I made several objections which applied to all of the exhibits and which I made with the same force and effect as the specific objections which have been made to the individual exhibits.

In the interest of saving time, I did not point out all of the hearsay and conclusions contained in these exhibits,

— but I would request the Examiner in determining the

4768 admissibility of these exhibits to consider seriously our contention that even the authors of these communications, if called as witnesses, would not be permitted to state the declarations contained therein. None of the declarations are shown to have been made on the knowledge of the purported authors and most of them are of the rankest kind of hearsay.

Since the government is relying to a large extent on the Federal evidence rule of June, 1936, I also invite the Examiner's attention to the specific wording of the statute. The government has apparently overlooked that part of the statute which confines the records included in the statute to those which have been made as a record or a memorandum of an act, transaction, occurrence or event. The

contents of the papers included in Exhibit 1043 are manifestly not records or memoranda of acts, transactions, occurrences, or events but are general statements of the personal conclusions of various authors referred to in the papers and general declarations relating to general information and reports which, by one manner or another, came to their attention. It is obvious that none of the declarations contained in the papers were made upon knowledge and that none of them are in a form which would permit them to be made through the mouths of witnesses from the witness stand.

4769 Since the papers included in this group of exhibits do not meet the first requirement under the statute, namely, that they are records or memoranda of acts, transactions, occurrences or events, it is not necessary to go into the question as to whether the papers meet the other requirements of the statute, but in passing it may be noted that in addition to the first requirements, before the papers can be admitted in evidence under the statute, there must be evidence in the record of the fact that they were made in the regular course of business and that it was the regular course of such business to make records of such acts, transactions, occurrences and events.

4776 HARRY E. HARMAN, JR., called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

I am State Procurement Officer of the Treasury Department in Georgia and have been since its inception which will be about three years ago in June or July. My duties as State Procurement Officer have been purchasing materials for these various relief agencies, everything from mules to building materials, pharmaceuticals, everything you can possibly think of, including cement.

4777 Q. Do your purchases of cement run very large?

A. I don't know what you would call "large" in comparison. Quite a bit of cement has been purchased by us.

Q. As to the method of purchasing, do you just go out

and buy? Do you have money at your disposal, or is there an established method by which you buy?

A. The Procurement Division procedure governs all purchases. Open competition.

Q. That is, you invite bids?

A. Invite bids on form 33 excepting emergencies under $300.

Q. Do you use the same sort of invitations on all commodities?

A. All commodities, yes, sir.

Q. Is there no difference in those specifications, for steel, say, as against cement?

A. The same invitation is used.

Q. That is all standard?

A. All standardized, yes, sir.

Q. From your experience as a purchasing officer there, have you become familiar with the available sources of supply for cement? Do you know, in other words, where your producers of cement are located?

A. I know very well.

Q. Whereabouts are they, in general? Whereabouts is there an available supply of cement?

4778 A. We have seven or eight companies available, I think, that supply that State. I can give you that information. (Examining paper.) Penn-Dixie, Clinchfield, Georgia, is the shipping point; the Lone Star Cement Corporation, Birmingham, Alabama; the Universal Atlas Cement Company, Leeds, Alabama; the Southern Cement Company, North Birmingham, Alabama; National Cement Company, Ragland, Alabama; Lehigh Portland Cement Company, Birmingham; Alpha Portland Cement Company, Phoenixville, Alabama; Georgia Cement & Products Company, Ragland, Alabama; Volunteer Portland Cement Company, Cowan, Tennessee; Southern States Portland Cement Company, Rock Mount, Georgia; Signal Mountain Cement Company at Chattanooga. Those are the home addresses. They have local agencies.

Q. Do you happen to know, Mr. Harman, whether any of those mills that you named are located on land grant routes?

A. Yes, sir, some of them are.

Q. That is, some of Georgia is served by land grant railroads?

A. Yes, sir.

4779 Q. Did you invite bids f.o.b. mill?

A. For a while we did, before we were stopped by the Procurement Division.

Q. That is, did you send invitations to manufacturers?

A. We sent to the manufacturers and dealers. The manufacturers insisted on being on the list.

Q. Did you receive bids from manufacturers?

A. Very seldom.

Q. Would there have been an advantage so far as the freight is concerned if you had received bids from manufacturers f.o.b. mill?

The Witness: Well, we asked for bids at the point of origin and destination, but these bids were commonly through the dealer and in some instances, some few instances, the dealer did bid at point of origin.

By Mr. Paulson:

Q. Would you say that the manufacturers refused to bid in Georgia?

Mr. Leisure; Just a moment. I would rather not
4780 have conclusions. He can state facts; what happened.

Whether they refused is a conclusion, of course. I would rather that he just state what happened.

Examiner Norwood: State whether they failed to bid.

By Mr. Paulson:

Q. Did the manufacturers respond to your invitations?

A. They would not bid as a rule on our invitations at all, with very few exceptions.

Q. About how many exceptions since you have been State Procurement Officer?

A. I could not state the number, but it is a very small percentage; possibly 10 or less percent of direct bids from the manufacturers.

4781 Q. Did that present any difficulties to you as a purchasing officer—the fact that you could buy only from the dealers?

A. Well, we have a traffic section there and the traffic man was on my neck all the time in regard to these Government bills of lading which would not be accepted by the dealer.

Q. What is the difference, whether you buy from the dealer or from the manufacturer as far as the freight is concerned?

A. Well, his contention was, and ours was, that we wanted to move that cement on Government bills of lading and take advantage of the land grant rate.

Q. Could not you do that when buying through the dealers?

A. No, sir.

Q. Did you attempt to do that?

A. Yes, sir.

4782 The witness identified Com. Ex. 1046 as Procurement Division Bulletin S. P. O. No. 59 of Treasury Department.

Mr. Paulson: I offer it for the record (handing to Mr. Leisure).

Mr. Leisure: We have no objection.

(COM. EX. 1046 was offered and received in evidence.)

Q. What policy which you were following did that have reference to?

4783 The Witness: We were asking for these bids at points of origin and f.o.b. destination.

By Mr. Paulson:

Q. Were you specifying something in your invitation?

A. We were asking them to specify the point of origin—f.o.b. cars point of origin and destination. We were asking prices at origin and destination.

Q. In the invitations which you sent to the dealers?

A. We did not know who would bid in 1935. The cement people were insisting on having the invitations, but our mailing list was so heavy—

Examiner Norwood: You mean the manufacturers were insisting on getting invitations?

The Witness: Yes. The mailing list was so heavy and the expense of preparing them so heavy, we wanted to cut it down, if possible, but we could not do it.

By Mr. Paulson:

Q. When you received bids from dealers, did you make any effort to save the Government expense for freight?

A. Yes, sir, and in some instances we did.

Q. What effort did you make along that line?

4784 A. We asked them even if the bid was—they did not state the point of origin, but we reserved the right to move it on any bill of lading that might prove advantageous to the Government, so as to deduct the com-

mercial rate, and in some instances the dealer did bid at point of origin.

Q. What did you do then?

A. We issued a Government bill of lading over the land grant road, but they would not accept it.

Examiner Norwood: Did you wish to have the dealer credit you for the difference in the rates?

The Witness: We wanted to issue a Government bill of lading and deduct the commercial rate.

By Mr. Paulson:

Q. Was that all right with the dealer?

A. Apparently for a while it was all right, but he could not get his manufacturer to accept it and we could not get the benefit of the land grant rate on those movements.

The witness identified Com. Ex. 1047 A, B, C, D and E as a letter written January 15, 1936, by "our" traffic head at that time, Mr. Fender. It was signed "by H. E. Harmon, Jr., E. L. Fender, Traffic Clerk". It was addressed to Captain Collins, Assistant Director of Procure-
4785 ment in Washington. This is Mr. Fender's signature "(indicating)". This letter passed over witness' desk before it went out. He is familiar with it. Attached to it is an invitation to bid—"what we call the short form contract No. 33, covering 1,000 barrels of cement going to Savannah, Georgia."

Mr. Paulson: I offer that for the record (handing papers to Mr. Leisure).

4786 Examiner Norwood: This letter is from this witness here, is it not?

Mr. Leisure: No, it is from Mr. Fender.

Mr. Paulson: He testified it was signed by Mr. Harmon.

The Witness: No, it passed over my desk for Fender's signature.

By Mr. Paulson:

Q. Your signature, you said, was on there, I believe.

A. No. We have a rule that all divisions of Procurement has to be signed on the typewriter by the State Procurement Officer. Then whether it is purchase or traffic or whatever it may be, it comes over the State Procurement Officer's desk before it is mailed.

Mr. Hershberger: Who composed the letter?

The Witness: Mr. Fender composed the letter.

By Mr. Paulson:

4787 Q. Are you familiar with the contents of the letter?

A. I have got so many of them, I have not read that.

Q. Are you familiar with the subject-matter?

A. The subject-matter is a traffic matter, I think.

Q. Can you refresh your recollection?

A. Yes, I can read that.

Q. And testify then from your own knowledge.

A. I can read it and testify from my own knowledge.

Mr. Paulson: Then I will amend the offer and offer it as a paper from which he will refresh his memory.

4788 Q. That Exhibit 1047-C and D, Mr. Harmon, is
4789 that your standard form of invitation to bid?

A. Yes, sir.

Q. How long has that been in use?

A. Since the inception of this office down there. Nearly three years.

Q. In its present form, has it been in use, I mean has this clause regarding transportation which you see here in the middle of the page, always been included (indicating)?

A. (Examining:) No, that was knocked out some time ago.

Q. Was it included when the form was originated?

A. No, that is multigraphed on there.

Q. When did you being multigraphing those clauses on bids?

A. Shortly after beginning with our procurement, we started putting the transportation clause on.

Q. For what purpose did you put that clause on?

A. To be able to get the land grant rate on our shipments.

Q. Has that form been continued in use?

A. No, sir, it was discontinued.

Q. Is it now in use?

A. No, sir, it has been discontinued.

Q. When was it discontinued?

A. February—was it 1936 or 1935? Bulletin 72 discontinued it.

Q. But that was a form which was in use during a period of your services?

4790 A. Yes, sir.

Q. And as officially sanctioned?

A. Yes, sir.

Mr. Paulson: I offer it in evidence.

The Witness: The printed form ran the same as this and the commodity. Of course, we would not have cement specifications on lumber. The multigraphed part had to be changed on the various materials we are purchasing.

Mr. Leisure: I am not clear when Mr. Paulson asked you a question about something that you had discontinued using. Would you mind pointing it out to me?

The Witness: We have put this clause in there (indicating) or we have put in there asking for the point of origin.

Mr. Leisure: This paragraph here (indicating) 4791 is not used now in your forms?

The Witness: Has not been I think since February, 1935, wasn't it? I think that was it.

Mr. Leisure: May I just put this on the record? It is short.

Examiner Norwood: Yes.

Mr. Leisure: You mean (reading) "Transportation allowance at the lawful rates published and on file with the Federal or State commissions to be deducted from the bid price in the event the Government elects to furnish contractor with Government bill of lading or to accept material f. o. b. cars at the point of shipment for delivery at specified points or nearest railroad siding to Government project at point of destination, state shipping point." That is the clause which you say is no longer used in your forms?

The Witness: On the invitation to bid on cement. We use it on other commodities.

By Mr. Paulson:

Q. And I think you said to your best recollection it was February, 1935, when that went out?

A. I think that was it.

Q. Around February, 1936, was it not?

A. It might have been 1936.

Q. It was later than this S. P. Q. Bulletin, was it not?

A. Bulletin 72, I think it was. That applied only to cement, though.

4792 Mr. Leisure: May I ask you, Mr. Paulson, are you offering this exhibit for the form of the printed material, or do you expect to use the order itself, the invitation itself, in any way?

Mr. Paulson: The form.

Mr. Leisure: Just the form. You are not offering it for the typewriting?

Mr. Paulson: That is correct.

Mr. Leisure: I have no objection.

(COM. EX. 1047-C, D and E was offered and received in evidence.)

Q. That clause which Mr. Leisure read into the record, Mr. Harman, provides a blank space which the dealer can fill in the shipping point?

A. That particular invitation asked for the shipping point or it would just reserve the right to issue a bill of lading and move it and deduct the commercial rate, is that what you mean?

Q. I say, that this clause speaks about transportation and it provides a blank space for the use of the dealer in filling in; in other words, in stating the shipping
4793 point. In response to the invitations did you receive bids from the dealers with shipping points filled in?

A. In some few instances, yes.

Q. And then what was your practice?

A. We issued a government bill of lading. In some instances they would give—I have one in mind where they gave five shipping points, three of which were land grant, and we issued a dealer, not knowing who his supplier was, the government bill of lading from points after we learned these five points which we thought were most advantageous to the government, and after some time we had a wire from the dealer in this particular case—

Q. (Interposing.) May I interrupt, Mr. Harman? Do you have a copy, or do you have any documents there to indicate just what project you are talking about?

A. I have one I had in mind; yes, sir.

Q. Before you go on, will you hand that to me, please? (After a pause.) Do you remember the project? Do you remember what project it was?

A. I do not know whether it was going to Macon or where it was. I will have it in just a minute. It is mixed up here in something else.

Yes, I have it. This was going to Sonimerville, Georgia.

Q. What is the date of that invitation or about when was the project under way?

4794 A. It was opened on January 6, 1936.

Q. How many barrels of cement?

A. 300 barrels.
Q. What was the town in Georgia?
A. Sommerville.
Q. Is 300 barrels a carload of cement?
A. It is over a maximum carload, I think.
Q. You said in that instance the dealer had stated a shipping point.
A. Wait a second and let me get this straight. I will have to change that because that information was received by telephone, but I would like to take the invitation on January 13, 1936, going to Barnesville, Georgia, which I think will clarify it more for these gentlemen as well as yourself.
Mr. Leisure: What is the date?
The Witness: The bid was opened on Monday, January 13, 1936.

By Mr. Paulson:
Q. On the same form of invitation we have seen?
A. Yes, sir; except in that instance we asked to state point of origin.
Q. Did they state point of origin?
A. Yes.
Q. How many dealers bid? Can you tell that?
4795 A. I have the mailing list here.
Q. I just want to get the details of this case.
A. In this case he did. He named five points.
Q. You are speaking of the successful dealer?
A. Yes, sir,—the Barnesville Planing Mill Company.
Q. Was the award made by lots?
A. I cannot tell without the tabulation. He may have been the low bidder.
Q. The successful bidder stated various shipping points?
A. Yes, sir.
Q. Which points?
A. Rockmart, Georgia, Clinchfield, Georgia, Ragland, Alabama, North Birmingham, Alabama, and Chattanooga, Tennessee.
Q. Now, that he stated those, what did your office do?
A. The office issued him bills of lading and he came back with a telegram and he said, "Invitation number so and so; Birmingham and Chattanooga manufacturers decline to ship cement except on commercial bill of lading,

hence we name Clinchfield, Georgia, or Rockmart, Georgia, as shipping point. We will ship from either of these points you prefer."

Q. Are those two points on land grant routes?

A. No, sir.

Q. Are any of the other three on land grant routes?

A. I believe all three of them were—

Q. (Interposing.) Since the dealer named only
4796 those two points which were not on land grant routes, was there any advantage to be gained by substituting a government bill of lading for a commercial bill of lading in those instances?

A. Yes, I presume there would have been considerable—

Q. (Interposing.) Since they eliminated the points which were on land grant routes and left you to choose from the two points not on a land grant route, was there any advantage to the government?

A. Not on those two points; no, sir.

By Examiner Norwood:

Q. In those exceptions where you stated you received bids both from manufacturers and dealers—you said in exceptional cases the manufacturers did submit bids—were any of those bids by manufacturers in the exceptions referred to, from points where you could ship on land grant routes?

A. No, sir.

By Mr. Paulson:

Q. Now, where did you finally get that cement from? Did you have to pay the full commercial freight on it or did you get the benefit of the land grant rate?

A. Yes, sir; we paid the commercial rate.

Q. Why did the dealer eliminate the three points on the land grant routes?

A. I think he made a mistake in the first place by naming those points. I presume that is it. I do not
4797 know. He had no authority to bid those points.

Q. Why could he not bid those points?

A. Well, from time to time I would have the cement representative in my office asking about these things, and they said they could not ship it on those bills of lading. We just had informal gatherings.

Q. You said you had meetings with representatives of the cement companies?

A. Yes, sir. We just discussed the things informally. I have known them all my life.

The Witness: (Interposing.) These little meetings came about prior to February, 1936.

By Mr. Paulson:

Q. What occasioned them? You said you called the representatives in.

A. I called the local representatives in Atlanta.

Q. Why did you call them in?

4798 Mr. Leisure: First, I would like to find out who they are.

Mr. Paulson: We are getting to that.

The Witness: I do not think you could very well ask me the names of the gentlemen in the cement industry any more than in the lumber or brick industry.

By Mr. Paulson:

Q. Why did you call the meeting?

4799 A. To discuss why they would not bid point of origin because the burden was on me to get out the bills of lading and I could not get them to state that and I wanted to know.

Q. Who were these people?

A. They were local representatives of the majority of those concerns that I read the names of in the beginning of the hearing, at Atlanta.

Q. Local representatives of the cement manufacturers?

A. Yes, sir; some one State and some three States—

Q. Do you remember any one of them?

A. Yes, Ken Morton.

Q. What company?

A. I believe Penn-Dixie.

Q. Anyone else?

A. I only happened to meet him because I lived in the hotel with him.

Q. Did they talk freely in these meetings?

A. Yes, sir; they were very amiable. They are nice fellows.

Q. Did they explain it?

A. No, sir; they just said they could not bid point of origin.

Q. Did they give any reason?
A. No, sir.
Q. You did not accomplish anything by the meeting, then?
4800 A. Not a thing.
Q. They had no excuse for refusing to ship to the dealers?

Mr. Leisure: Now, I think that is going too far.

Examiner Norwood: Objection overruled.

Mr. Leisure: Does Your Honor mean he can answer they had no excuse for not doing—

By Mr. Paulson:

Q. Did they offer any reason or explanation?
A. No, they did not.
Q. Did you ask them for a specific answer as to why their companies would not supply dealers with any shipping point from which the dealer wanted to get his cement?
A. Naturally I asked that question many times.
Q. Did you get an answer to it?
A. No.
Q. Did you ask the dealers the same question? Did you find out from the dealers why they could not get cement from the manufacturers in that way?
A. No, I would not come in contact with the dealers except locally in Atlanta. I did not contact the dealers usually because usually that dealer had so many more things to sell us that they were not interested particularly in cement. It was just one of the many lines that the dealer represented, because usually the building materials dealer handles cement along with brick and other building material.
4801 Q. Have you any idea how much expense to the Government was at stake in this freight situation for your State—Georgia?
4802 The Witness: I have one case from—this may throw some light on it—I have one case where a man in Savannah, I think, overstepped the rules of a building materials association and he just went out and bought him some cement for a new company and when he got it
4803 in, he could not pay the commercial freight and he had to let us substitute from Tennessee on the land grant and we saved $900 and some odd on that one shipment.

As far as saying approximately what we saved, I could not say. Of course it runs into money—we know that—big money.

By Mr. Paulson:

Q. You did save $900 and some?

A. He did not have any money and could not get the stuff released and he personally let us submit the bills of lading.

Q. Do you know how many barrels were involved in that shipment?

A. I can tell you in a minute. That was a thousand barrels.

Q. A thousand barrels?

A. Yes, sir. No; that was 2,000 barrels. I beg your pardon. It is 2,000 barrels.

Q. Mr. Harmon, I believe you testified that you were left to purchase your cement through dealers almost exclusively?

A. As a rule; yes, sir.

4804 Q. Did you ever have an instance where you received but one bid for a project?

A. Yes, sir; that is quite frequent.

Q. Quite frequent?

A. Yes, sir, quite frequent.

Q. And I suppose proportionately more frequently, two bids and three bids?

A. Yes.

Q. Did you have any experience with raising of prices by dealers in any particular town?

A. I only had one instance of that, and that was attributable in my opinion to the local building material association and not the supplier.

Q. What town was that?

A. That was in Savannah, Georgia.

Q. What were the facts there?

A. Well, the Savannah Building Material—I don't know the name of the association they formed, but they just got together and gave us a four-page printed booklet of their prices on everything and said that they were going to stick by them.

Q. Were they higher than the prevailing prices?

A. They were higher than I was paying in other parts of Georgia.

Q. How much higher?

4805 A. Well, it varies on the different items.

Q. On cement?

A. No, cement was not particular, because that is a seaboard town and there was a water rate there that affects that. I did not have any trouble with cement there, to be perfectly honest with you.

Q. In that town?

A. No, sir.

Q. In any town of the State, did you ever find the dealers holding you up, so to speak?

A. No, I did not.

Q. You said, I believe, that you purchased a great many commodities?

A. Yes, sir.

Q. Do you find that there is a great deal of identical bidding? Did you get identical bids on other commodities?

A. Well, from time to time I do.

Q. Did you notice anything particular about cement there? Did it stand out in any way? Was it normal or regular?

A. No, cement is more identical bids than any other commodity.

Q. Noticeably so?

A. Yes, sir, in comparison with other commodities.

Q. So that it came to your attention in the regular course of business?

4806 A. I ought to amend that by one statement, in fairness to all concerned. There is one other industry that is just as strict and may be a little stricter than cement on that bidding.

Q. What industry is that?

A. The steel industry.

4808 Mr. Paulson: I believe there was an offer pending, Your Honor, of three exhibits.

Examiner Norwood: Is there any objection to that?

Mr. Leisure: May I ask the witness a question, Your Honor?

The Examiner: Certainly.

By Mr. Leisure:

Q. Exhibit 1048-A, Mr. Harman, will you look at it and tell me whether or not you saw it before it was mailed, or read it before it was mailed?

A. Yes, sir.

Q. You passed on the letter before it was mailed?

A. Yes, sir, this is a shipment from an account in Tennessee to I think the Southern Coal—

Q. (Interposing.) Do you want the letter to finish
4809 your answer?

A. Yes, sir; it is in reference to a shipment to an agent or representative of a cement company from Carolina-Tennessee to the Southern Coal & Supply Company of Savannah, when he could not finance the carrying charges, and they did accept our bills of lading and let us deduct.

Q. I notice it is signed by Mr. Fender, Traffic Section.

A. That is correct.

Q. Would the letter ordinarily come over your desk, or was this a special occasion?

A. All of his mail has to go over my desk.

Q. You read it and approve it before it goes out?

A. Yes, sir, and if I do not understand it, I get him to straighten me out as to what it is all about.

Q. All letters go over your desk?

A. Yes, sir.

Q. As to the next exhibit, 1048-D, I take it you received a copy of that telegram?

A. Yes, sir, all telegrams are brought directly to my desk and then redistributed to whatever division is interested in it.

Q. Now, Mr. Harman, when you received this telegram, you received it in your official capacity, as I believe you said, State Procurement Officer?

A. Yes, sir.

4810 Q. You were acting in that capacity at the time you received it?

A. Yes, sir.

Q. You were also acting in that capacity when you say this letter 1048-A which Mr. Fender wrote, you were acting in your capacity as State Procurement Officer?

A. Yes, sir.

4813 Examiner Norwood: Can the witness testify independently as to the facts contained in this letter?

The Witness: Your Honor, I can scan the letter hurriedly and tell you, but I have 36,000 of these transactions and I would not want to go on record as an authority.

Examiner Norwood: What is the number of that Butler letter?

Mr. Paulson: 1048-C. With respect to this Butler letter and other letters which we hope to introduce—

Examiner Norwood: (Interposing.) Let him look that over. Is this D connected with that?

Mr. Leisure: That is a telegram that the witness stated he received, your Honor.

4814 Mr. Paulson: 1048-D is a reply to a letter written by this witness to Mr. C. P. Eagle.

The Witness: I am familiar with this transaction.

Examiner Norwood: I have rejected C. Let the witness give us his independent testimony of what is back of that letter.

The Witness: The Savannah Company bought this cement and was awarded the contract and the material was badly needed on the job and when the cars began to arrive the man had no financial backing at all. I think, in the first place, there was something back of it that I did not know about. The whole community, including those dealing in cement, were very much exercised over his getting this bid, and he appealed to us to help him out in getting the cars released because we had to get the material on the job and Mr. Fender talked to me about it and I am reasonably sure that he said that this man agreed to accept the government bills of lading and then to deduct from his invoice the commercial rate. That is the gist of it, as I recall it.

When it came to hauling the cement to the job,

4815 he appealed to us again to get some money for him real quick; that he could not get any one to haul it for him. It seems the local banks were putting the clamps on him. He had a terrible time on the transaction.

4822 Mr. Leisure: Your Honor, in order to save time and to try to cooperate, I want to say, we are not setting any precedent when we withdraw our objection to a letter between two departments of the Government. I am going to withdraw my objection to 1048-A so that we can get on with the proceedings.

Examiner Norwood: Is that 1048-A?

Mr. Leisure: 1048-A and B; it is a letter.

Examiner Norwood: And the telegram?

Mr. Leisure: Yes, the telegram also.

(COM. EX. 1048-A, B and D was offered and received in evidence.)

The witness identified Com. Ex. 1049-A, B, C and D
4823 as a letter from his office by Mr. Fender to Mr. Hayghe giving a resume of Mr. Fender's experience on this shipping. Mr. Fender was the first traffic clerk that "we had." The witness saw the letter before it was mailed and the letter was mailed with his approval.

Mr. Paulson: I offer it for the record.

4825 By Examiner Norwood:

Q. You examined and approved this letter, Mr. Harman?

A. Yes, sir.

Q. Are you familiar with all the facts stated therein?

A. I would not say I am familiar with them minutely, but I am familiar with the transactions more or less—the objects of them—and what we were trying to do.

4826 Q. They are reports which were given to you which you verified and acted upon?

A. Yes, sir; from my permanent files. This is a resume of the various transactions where we were not able to issue government bills of lading and make certain savings on certain contracts we held with these dealers.

Q. And as a result of your investigation and participation in this, you can swear to the truth of them?

A. I can swear to the truth of them as far as I can depend on my traffic section knowing freight rates.

Mr. Zimmerman: What some one told you?

The Witness: No, I went over the files and he would bring in the files and say the freight rate was so much on the commercial bills of lading and so much on the government bills of lading. He has access to those rates, you understand.

Mr. Zimmerman: You mean, then, so far as the figures are concerned?

The Witness: No. You see, he ends up with the statement of the savings to the government.

By Mr. Zimmerman:

Q. So far as the figures are concerned, you could not vouch for them?

A. That is right.

Q. As to the facts, do you have first hand infor-
4827 mation of those facts?

A. Yes, sir; because these are my files.

Q. I mean as to the facts stated there?

A. Yes; these are from my files.

(COM. EX. 2049-A, B, C, and D was offered and received in evidence.)

The witness identified Com. Ex. 1050 A as a letter from a successful bidder and signed by J. G. Allen. It is addressed to H. E. Harman, Jr., Atlanta, Georgia, and received in the regular course of business. There is the time stamp "(indicating)". It had to do with purchase order 3422. "I see the notation we put on there. We have to put some notation on there."

4828 Q. Was there some controversy or difficulty about that contract that necessitated that writing?

A. Well, in this particular case, just the same as the others we were referring to—where we tried to issue a government bill of lading.

Q. Is that a letter written to you by a dealer explaining why he could not meet with your request?

A. Yes.

Mr. Paulson: I offer this as a Commission exhibit.

4829 By Examiner Norwood:

Q. Can you verify the statements made in this case of your own knowledge?

A. Where the man said the railroad refused to accept them?

Q. Yes.

A. Only on the precedent set. I have other letters like that.

Examiner Norwood: I do not see why it should be received.

Mr. Paulson: I would like to note an exception, your Honor.

Examiner Norwood: There is always an exception.

By Mr. Paulson:

The witness identified Com. Ex. 1050-B as a letter relating to purchase order 4158 received from the McNair Lumber & Supply Company, Macon, Georgia, and addressed to the State Procurement Officer in response
4830 to a letter written by him. It concerned difficulties over the freight that should be paid by the government.

4831 Q. What was the problem that you were faced with in regard to that purchase order?

A. This issuance of a Government bill of lading to the dealer.

Q. Did your purchase order in that case provide that the shipment should move on a Government bill of lading if you requested it?

A. I will have to look in here and check this. I want to make sure before answering that question.

4832 Q. I have what purports to be a copy of the purchase order; Mr. Harman.

A. F.O.B. Birmingham, Alabama, subject to deduction from the invoice price of the commercial freight rate if shipped on Government bill of lading.

Q. That was the contract with the dealer?

A. Yes.

Q. What does that mean?

A. That means if it happened to be a land grant point and we issued a Government bill of lading we would, from his invoice, deduct the commercial rate.

Q. That is the kind of contract you entered into with the dealer when you made the award?

A. Yes, sir.

Q. Did he have difficulty in fulfilling that contract?

A. He did not fulfill it.

Q. Is that the letter in which he tells you he could not fulfill it?

A. Yes, sir.

Q. Does it give the reason he could not fulfill it?

A. It gives his reason.

Q. Did this cement move on Government bill of lading eventually?

A. No, sir; it came on commercial.

Q. So your contract was of no force and effect as
4833 the result of something or the other?

A. Yes, sir.

Q. And that letter bears on that question?

A. Yes, sir.

Mr. Paulson: I offer the letter.

Mr. Leisure: Your Honor, without taking time to read the letter, unless some arrangement can be made whereby we can look over these exhibits and come to some agreement with counsel—and we might be very well able to do that—we just can not admit letters written by dealers to Mr. Harman. If Mr. MacNair, the writer of this letter 1050-B, expresses certain views, we have a right to bring him here and cross-examine him.

Examiner Norwood: I do not think that is a refreshing of his recollection. That is part of the transaction discussed by the witness.

Mr. Leisure: Counsel asked the reasons why he could not fulfill it. He should state the facts. If you are going to offer in evidence letters that he wrote at the time, we should have the right to cross-examine him about his statements. He may be mistaken about some of these statements in this letter.

Examiner Norwood: Objection overruled and I will receive that as 1050-B.

Mr. Leisure: For instance, he says, here "We are
4834 unable, on account of all cement manufacturers"—

Now, if Your Honor please, that takes in a great deal of territory. I am sure on cross-examination, if he were on the stand, he would say he meant the manufacturers in his particular section and not all of the respondents in this case. So, you can see that a letter of this kind is very dangerous.

Mr. Paulson: It is limited, in the direct testimony, to those around in that territory.

Mr. Leisure: The letter is incompetent, immaterial and irrelevant. The author of the letter has not been produced and there has been no proper foundation laid for its receipt in evidence.

Mr. Hershberger: I should like to see it also before you rule, Your Honor.

Mr. Zimmerman: We object, further, on the ground it is hearsay and not addressed to or received by any respondent in this case; that there is no way of telling whether the contents of it are true or false nor of punishing the writer of it if false testimony be contained in it. Who knows whether he is lying or telling the truth?

Examiner Norwood: There is plenty of opportunity to show it is not true, if it is not true.

Mr. Zimmerman: How?

4835 Examiner Norwood: Because these transactions show the particular orders and there are the dates and there are the parties.

Mr. Zimmerman: I have not examined it, but I make the objection not as to the relevancy of the contents, but purely on the question of competency.

Mr. Hershberger: I should like to add the further objection that if this is admitted it is unsworn testimony and I object to it on that ground.

Examiner Norwood: It is received as marked.

(COM. EX. 1050-B was offered and received in evidence.)

4836 The witness identified Com. Ex. 1051 A as a copy of what "we call our mailing list"; that is the only protection "we have" as a procurement officer. It is a mailing list for invitations mailed out to ask for prices, and this particular one was mailed to twelve cement dealers; "the next" as a copy of the bid of the successful bidder; Com. Ex. 1051 C as a copy of the bid received "by us"; Com. Ex. 1051 D as the abstract of bids. "We have" to abstract all of these bids and give prices delivered.

4836 Mr. Paulson: I offer the exhibit for the record.

Mr. Leisure: May I ask a question?

4837 By Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Harman, was there only one bid in this case?

A. Only one bid received, yes, sir.

Mr. Paulson: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1051-A, B, C and D was offered and received in evidence.)

By Mr. Paulson:

Q. Showing you Exhibit 1051-A, B, C, and D, will you look at that and tell me how many invitations to bid you sent?

A. We sent twelve in this case.

Q. How many to the town where the project was located?

A. I do not know whether Sea Island or Saint Simons is included in this trading area, as you call it; if not, there were five dealers in Brunswick circularized.

Q. To whom besides those dealers did you send bids?

A. We sent them to Atlanta, Albany—.

Q. (Interposing) Well, to whom?

A. Portland Cement Association, Atlanta, Georgia—do you want the names?

Q. Yes.

A. Carolina Portland Cement Company, Atlanta,

4838 Georgia; Mr. Spot Grant; Southern States Portland Cement Company; James W. Smith; Cy Perkins; Arthur True; Wright & Cowan; Coney & Parker; Bruns-

wick Hardware Company; Miller Lumber Company; and Lord Lumber Company.

Q. How many responses did you receive?

A. One.

Q. From a dealer or manufacturer?

A. Dealer.

Mr. Hershberger: May I ask a question; what was the quantity involved?

Mr. Paulson: Yes.

By Mr. Paulson:

Q. What was the quantity involved there?

A. 55 barrels—less than a carload.

The witness identified Com. Ex. 1052 A as a mailing list; Com. Ex. 1052 B as an invitation to bid; Com. Ex. 1052 D as an abstract; "C" (the reverse side of the invitation) as the invitation to bid.

Mr. Paulson: I offer the exhibit for the record.

4839 Examiner Norwood: There is an offer of an exhibit pending.

Mr. Leisure: No objection.

(COM. EX. 1052-A to D was offered and received in evidence.)

Q. Showing you Exhibit 1052-A, B, C, and D, Mr. Harman, will you state how many invitations to bid were mailed?

A. Twenty-six.

Q. How many responses were received?

A. One.

Q. Were any responses received from manufacturers—cement manufacturers?

A. Not that I know of.

Q. Or invitations mailed to cement manufacturers?

A. Yes, sir.

4840 Q. Was there more than one dealer in that town where the project was located?

A. The mailing list shows four.

By Mr. Leisure:

Q. May we have the amount involved, Mr. Harman?

A. 142 barrels; that is a minimum car.

By Mr. Paulson:

Q. Showing you Commission's Exhibit marked for identification 1053-A, B, C, and D, I will ask you to state what it is?

A. This is a similar case of 28 dealers who were circularized, dealers and manufacturers,— and one bid received.

Q. Similar to 1052-A, B, C, and D?

A. Yes, sir.

Mr. Paulson: I offer it in evidence.

Mr. Leisure: No objection.

(COM. EX. 1053-A, B, C, and D was offered and received in evidence.)

The witness identified Com. Ex. 1053 A, B, C and D
4841 as 28 invitations for bids mailed to the following manufacturers: Penn Dixie, Lone Star, Universal Atlas, Southern, National, Lehigh and Alpha. He does not know whether Carolina Portland Cement Company is a manufacturer or not—he thinks it is a dealer. "I am not sure, no, the Georgia Cement Products Company is not a manufacturer."

Q. How many bids were received?

A. One.

By Examiner Norwood:

Q. Did you receive that one from a manufacturer?

A. No, sir, this is from a dealer in Calhoun, Georgia.

By Mr. Leisure:

Q. What is the amount involved?

A. 142 barrels.

Cross-Examination by Mr. Leisure.

Q. Mr. Harman, you told us that you were State
4842 Procurement Officer in Georgia,—just what does that mean—does that mean you were a State officer or a Federal officer?

A. I am a federal officer,—just to use common language—a purchasing agent.

Q. How long have you held that position?

A. Since the inception of the Procurement Office in Georgia, and I started out with the C. W. A., it will be five years in December.

4843 Q. Now, you have told us, I believe, that your purchases were not confined to the purchase of cement?

A. No, sir.

Q. You purchased many materials?

A. Yes, sir.

Q. Is it necessary for you to consult Washington in the purchase of those materials or do you make purchases on your own account?

A. We have to get permission in case of large amounts to go ahead with the purchase and there are certain types of equipment that we have to send to Washington about, but ordinarily the State Procurement Officer purchases, I would say, 95 per cent without further reference to Washington.

Q. Taking up this subject of land grant rates, am I right in saying that land grant rates apply only to the property of the Government?

A. I do not know whether you call it property of the Government or not. It is certain concessions they have in return, I think, for certain concessions made certain railroads.

Q. You do not understand that a private person could ship on land grant rates?

A. No, sir; not as I understand it.

Q. He could not?

A. No, sir.

Q. Now, the cement does not become the prop-
4844 erty of the Government before title to the cement passes? That is a fact, is it not?

A. Well, it would not become our property unless we took it at origin. It is the manufacturer's or the dealer's property until it gets to destination.

Q. Suppose a case where a dealer is an Atlanta dealer and that you wanted the cement for use in Atlanta: Suppose the shipment from the dealer's yard in Atlanta is to a project in Atlanta: That would not involve land grant rates at all, would it?

A. That is a question that I could not answer. If he had that cement in stock and bid it out of stock, I do not see how we could ask it that way—if it was in stock.

Q. Quite right. Take another case: Suppose the dealer gets title to the cement in Atlanta and the dealer then sells it to the Government in Atlanta: It is then in Atlanta where the cement becomes the property of the Govern-
ment, does it not?

4845 The Witness: You mean he has it in stock in Atlanta?

By Mr. Leisure:

Q. Yes.

A. And he is the successful bidder?

Q. Yes.

A. I do not see how we could do anything other than issue him a purchase order.

Q. Now, Mr. Harman, suppose there is a cement mill in Birmingham, Alabama, and suppose there are land grant rates on the railroad line between Birmingham and Atlanta: If you could get title in Birmingham so that
4846 the cement was the property of the Government while it was en route between Birmingham and Atlanta, then you could use a Government bill of lading?

A. That is true.

Q. And necessarily the land grant rate would apply?

A. Yes.

Q. On the other hand, if, for any reason, you could not buy the cement in Birmingham, Alabama, then the cement would not be the property of the Government while en route between Birmingham and Atlanta. Is not that true?

A. If we could not take it at point of origin, it would not be ours until receipted for on the project.

Q. In that event, the Government would not be entitled to the land grant rate? I will change that because there may be a dispute over the word "entitled".

A. If we could not take it on the property, necessarily, it would not belong to us.

4847 Q. Suppose the Birmingham manufacturer that I just mentioned before, has sold cement to an Atlanta dealer and that is on the condition that the title to the cement passes to the dealer in Atlanta: This shipment would move on commercial bill of lading, would it not? Would not that follow?

A. It would move on commercial bill of lading if this dealer in bidding refused to state the point of origin and give us the privilege of taking it. Naturally it would be his property in Atlanta and we would have no interest in it.

Q. But if the Birmingham manufacturer sells a dealer in Atlanta, it would move on a commercial bill of lading? That is my question.

4848 A. Oh, yes, sir.

Q. Now, in such a case the cement is the property

of the manufacturer while it is enroute to Atlanta, is it not?

A. Unless we have been given the privilege of taking it at the point of origin.

Q. And that privilege would come from the manufacturer necessarily, would it not?

A. Well, I don't know as it would come from the bidder.

Q. He is the owner of the cement.

A. I do not care what the arrangements might be between he and his dealer, that would not necessarily hold,—I could not make that statement, I do not believe.

Q. Under such a bill of lading, such a commercial bill of lading, and under the circumstances I have just stated, could the commercial bill of lading be exchanged for a government bill of lading in your opinion?

A. Do you mean on land grant?

Q. No, this was from the manufacturer selling to the dealer.

A. I think we had a ruling against turning commercial into a government; I am not positive of that; I would not like to go on record.

Q. Now suppose, Mr. Harman, you had a case where your invitation gave notice that shipment at your request would be made on a government bill of lading; in that case the successful bidder, if he were a dealer, would be
4849 the one to whom you would make a request to ship on the government bill of lading, would you not?

A. You can not contact any one except those that make the contract.

Q. And in that case, the contracting parties would be the dealer and the government?

A. That is true.

Q. And no cement manufacturer would be a party to such a contract?

A. We cannot recognize the supplier at all; we are just interested in the man that signs the contract.

Q. In your experience you would not consider the manufacturer to be bound by the provisions of the contract by exchanging bills of lading in that instance, would you?

A. Not if he did not sign the contract.

Q. I think you said a moment ago, since the lunch period, when Mr. Paulson questioned you, that most of your bids did not come from manufacturers,—that most of them came from dealers?

A. Yes, sir; that is right.

Q. And when you were talking about the majority of the bids being identical, did you have reference to those?

A. No. sir, not the dealers' bids.

Q. You had reference only to the manufacturers' bids?

A. Yes, sir.

4850 Q. And what percentage again did you say you had of manufacturers' bids?

A. I would say less than 10 percent.

Q. All of your purchases, acting in your official capacity, are for the State of Georgia, and only for the State of Georgia, is not that true?

A. Only for the State of Georgia, yes, sir.

Q. Mr. Harman, there were, I think, three separate cases wherein you received only one bid?

A. Yes, sir.

Q. Would you say that it is a typical example or an exception when you receive only one bid?

A. We have had,—you are speaking of cement?

Q. Yes, sir.

A. We have had quite a few one-bid in our territory, and in view of the fact that the procurement officer's protection is only competition, it has caused me some concern from time to time.

Q. Is it or is it not true that in the majority of cases you have more than one bid?

A. Yes, sir, that is true.

By Examiner Norwood:

Q. Well, since when has that been true? Is there any special time when the one bid commenced?

A. I will tell you frankly the way it happens in 4851 these rural communities; you take cement bids in Savannah, August, Atlanta, or Macon, where there are fifteen or twenty building material dealers, we do get pretty good competition, but in these rural districts, as these files introduced here today indicate, we only get one bid quite often.

Q. Is that the small communities?

A. Yes, sir, that is the small communities, as a rule.

By Mr. Leisure:

Q. There is one thing I did not quite understand this morning. You mentioned something about a four-page booklet being issued; do you recall that?

A. Yes, sir.
Q. Was that issued by certain dealers?
A. The dealers, yes, sir—the dealers' association.
Q. It was not manufacturers?
A. No, sir.

By Mr. Hershberger:

Q. You are familiar with the prices that cement generally brings, are you not, from your experience in buying?

A. I am familiar with cement,—about as familiar as I am with the other commodities we purchase.

4852 Q. Would you say that the prices which have been shown on those bids that were introduced in evidence were reasonable prices, from your experience in cement?

A. Yes, I would say that.

Redirect Examination by Mr. Paulson.

4854 Q. Did you in your experience as a purchasing officer find that any other industry adopted the policies which precluded your getting advantage of land grant rates?

Mr. Leisure: Just a moment, Your Honor. What other industries did, we can only try one case at a time; I am afraid if we get off in that field we will have to follow it up and we will be trying other cases. What other industries did is not material to the issues in this case; I object to it.

Examiner Norwood: I do not think so, not in that particular respect. You may ask about identical bids in other industries.

Mr. Paulson: I will withdraw the question.

By Mr. Paulson:

Q. Do you receive bids direct from manufacturers in most of your other commodities that you buy?

A. In some cases.
Q. As a general rule?
A. No, the general rule is not from the manufacturer.
Q. From the dealer?
A. Yes, sir.

Q. And do you find that since you get bids through dealers that you are deprived of the opportunity to ship on Government rates these other commodities?

4855 Mr. Leisure: Your Honor, that question has many objectionable features. Whether he is deprived of something or not calls for a conclusion rather than a statement of fact. Now, dealing with other commodities other than cement, I do not think we ought to open that door and get into that field; if we do, we will have to follow it in our case.

Mr. Paulson: That is the only way you can get a clear picture as to cement is to see what the picture is in regard to the other, that is the only way you can judge what is happening in the case of cement.

Mr. Leisure: The others might be all good or they might be all bad, that would not be evidence in this case.

Mr. Paulson: The question does not go to the ramifications of all industries.

Examiner Norwood: It may have some bearing on whether there was concerted action.

By Mr. Paulson:

Q. In other words, are you able to ship most of the commodities that you purchase on Government bills of lading?

Mr. Leisure: Whether he is or not, Your Honor, has no bearing on this case.

Examiner Norwood: The objection is overruled.

4856 Q. What else do you buy?

A. Heavy materials, such as slag.

Q. Do you ship that on Government bills of lading if it happens to be on a land grant route?

A. Yes, sir.

Q. Sand and gravel?

A. Yes, sir.

Q. But not cement?

A. No, sir.

By Mr. Wooden:

Q. Referring to that Sommerville case where, I
4857 believe, there were 2,000 barrels involved and you found you could make a saving of something over $900 by shipping on Government bill of lading or by deducting the commercial rate—

A. Yes, sir.

Q. That approximated 50 cents a barrel, did it not?

A. I do not know how many barrels were involved.

Q. You said 2,000.

A. Yes, sir.

Q. Did you take that into consideration in your answer that you thought the prices charged were reasonable?

A. I certainly did, because I have not been able to take it on a bill of lading. I considered them reasonable because, since I had occasion to use a bill of lading—

Q. If you could use the Government bill of lading—

A. It is obvious we could save the 50 cents a barrel.

Q. What is your basis for the opinion, then, that the prices are reasonable as charged?

A. I thought I made that clear. I have two of these men in my office who are former contractors. One's father-in-law is a large contractor in Atlanta now and on cement, sewer pipe or building materials, including No. 1 flooring material, we check the prices. We check those prices by the prices the contractors in Atlanta pay to see that we do not pay too much for materials.

Q. Do you consider that you were buying cement 4858 at a competitive or non-competitive price?

A. I do not think I could answer that. I do not know. I am supposed to be buying on a competitive basis.

Q. Would that make any difference in your answer as to whether you thought the prices were reasonable, if the prices were competitive or not?

A. As to what?

Q. If the prices were reasonable if they were bought on a competitive or non-competitive basis.

A. In competition, you are supposed to have lower prices.

Q. Do you think you had price competition in these cement purchases?

Mr. Leisure: I think I would be willing to receive this witness' answer on that from his practical experience, but I think the question is improper.

Examiner Norwood: Do you have different prices?

The Witness: Yes, sir; in the State because of the different freight rates from different distances.

By Mr. Wooden:

Q. But on deliveries to the same project, delivered from the same point, then what?

A. I do not quite understand the question.

Q. I understood you to say the prices over the State would vary according to location.

A. Certainly.

4859 Q. But at a given location, like Atlanta, the prices at Atlanta would be the same?

A. No, sir; we get different prices.

Q. On cement?

A. Yes, sir.

Q. From dealers?

A. Yes, sir.

Mr. Leisure: I think that is all. Your Honor, I think I should correct something in the record that I think is a mistake. Mr. Wooden just suggests the difference was 50 cents a barrel and it is shown on this paper (exhibiting) that it would be 1 cent a barrel instead of 50 cents a barrel.

Mr. Leisure: It is on Exhibit 1049 and is all set out here.

4860 W. E. HAYGHE was thereupon recalled as a witness for the Commission and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Paulson.

Q. Mr. Hayghe, you have testified in this hearing before?

A. Yes, sir.

Q. Mr. Hayghe, are you familiar with the bids received by the Procurement Division—generally familiar with the bids and methods of bidding in the Procurement Division?

A. Generally; yes, sir.

Q. Do you know whether or not, in response to the invitations to bid, cement manufacturers would insert a clause governing their bid?

A. Yes, on one price they would insert a clause to the effect that this price was the Government's delivered
4861 cost to destination shipment—the Government to deduct land grant rates and shipments to move on Government bills of lading.

Q. Did they quote f. o. b. mill prices in response to your invitations?

A. No.

4862 The Witness: One price was f. o. b. destination price and the other price was in effect a basis for determining the price to be paid bidder, the government to move shipments on government bills of lading.

By Mr. Paulson:

Q. Do you know whether the Procurement Division made a special effort, in the State of Alabama, to secure direct bids f. o. b. mill in connection with cement purchases?

A. It did.

Q. What procedure did it follow in making that effort? What was done?

A. The invitation was qualified with a clause to the effect that any clause inserted therein purporting to specify a total delivered cost to the government at destination, land grant rates to be deducted and shipment to move under government bills of lading, were to be declared improper and not to be considered.

Q. Was that clause, or a clause to that effect, inserted in the invitations for bids?

4863 A. It was inserted in the invitations to bid.

Q. About when was this case made?

A. Approximately—I really do not know. It was within the past month or month and a half—within sixty days.

Q. Was it still the practice in the cement industry to submit bids with the control clause when you made this test case? In other words, was the control clause in use when you—

A. (Interposing) To the best of my knowledge it was generally in use.

Q. Can you state whether or not you were successful in your attempt to get f. o. b. mill bids?

A. We were unsuccessful.

Q. Did the manufacturers respond? Did you get responses to those invitations to bid?

A. We did.

4864 Q. Did cement manufacturers to whom bids were sent observe the clause which you inserted as to irregular and regular bids?

A. I think that can be best answered by stating that the bids in response to these invitations were the same as bids previously received on invitations which did not contan this qualifying clause.

Q. Does that mean that the clause you inserted changing the form of your invitation to bid, was completely ignored?

A. It was.

Q. Showing you these papers marked for identification 1054-A to CCC, I wish you would state for the record what

those papers are that are so marked. If you will do
4865 it by sections there, I think it will help clarify the record.

A. Exhibit 1054-A to E is a bid of the Pennsylvania Dixie Cement Corporation in response to invitation No. 16876 of the State Procurement Officer for Alabama. 1054-G to K is a bid in response to the same invitation received from the Lone Star Cement Corporation.

1054-M to P is a bid of the Patrick Lumber Company in response to the same invitation.

1054-R to V is a bid of the Universal Atlas Cement Company in response to the same invitation.

1054-X to BB is a bid of the Lehigh Portland Cement Company in response to the same invitation. It is the same invitation in each case unless otherwise stated.

Q. I think that will make it clear.

A. 1054-CC to FF is a bid of the Signal Mountain Portland Cement Company.

1054-HH to LL is a bid of the Alpha Portland Cement Company.

Exhibit 1054-NN to QQ is a bid of the Georgia Cement & Products Company.

1054-SS to XX is a bid of the National Cement Company.

1054-YY to BBB is a bid of the Hermitage Portland Cement Company.

Mr. Paulson: I offer these in evidence.

4866 Mr. Leisure: With regard to the short haul contract are you offering that also?

By Mr. Paulson:

Q. Is the invitation for bids included.

A. This is the short haul contract which is the invitation and bid combined.

Examiner Norwood: Is there any objection?

Mr. Leisure: I have not finished looking at them, Your Honor; there are a number of bids here.

Examiner Norwood: Go ahead.

By Mr. Paulson:

Q. In connection with the last offer, I would like to offer another exhibit relating to it, and I show you, Mr. Hayghe, Commission's Exhibit marked for identification 1055 and ask you to state what that is, if you know?

A. This is a photostatic copy of abstract of bids under Invitation 17,120.

Q. Is that the invitation that was marked Commission's Exhibit 1054?

A. No, sir.

Q. It is not?

A. No, sir.

By Examiner Norwood:

Q. That is not an abstract of the bids just offered in evidence, is it?

4867 A. It is not the same invitation, but it is the same job.

By Mr. Paulson:

Q. Does it relate to the same project?

A. It does relate to the same project and the same quantity of cement.

By Examiner Norwood:

Q. It is not an abstract of these bids that are marked 1054-A to CCC?

A. No, sir.

Mr. Leisure: Your Honor, as to the group of exhibits offered, we have no objection to the invitation to bid to the manufacturers who are respondents in this case, but 1054-M is an invitation to bid to Mr. R. C. Patrick, and listed in another place as Patrick Lumber Company; I see no reason why a transaction between Mr. Patrick and the Government should be offered against us in this case. I therefore object to that exhibit.

4868 (COM. EX. 1054-A to CCC offered and received in evidence.)

4870 Washington, D. C.,
Friday, April 1, 1938.

4871 Examiner Norwood: The offer of 1055 for identification appears to be pending. What is it that you wish to do about that?

Mr. Paulson: Is there any objection to 1055?

Examiner Norwood: It is an abstract of bids.

Mr. Leisure: May I ask the witness a question about the exhibit?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Hayghe, 1055 appears to be a photostat of an abstract of the bids,—two bids, I think there are, are there not?

A. No, that is one bid.

Q. One bid?

A. No, I beg your pardon, that is one response to one invitation.

Q. It is one invitation?

A. That is right.

Q. Have those invitations and bids been identified here?

A. Not the particular one represented by this.

Q. I do not recall, Mr. Hayghe, that the record
4872 shows whether these bids were thrown out and you had another invitation?

A. The record does not show that.

Q. What was the fact? Were these thrown out and subsequent lettings made?

A. No, that was not thrown out.

Q. These were accepted?

A. The acceptance was given on that invitation.

Mr. Leisure: Will the invitation and bids be made available to us? Can we see them, Mr. Paulson?

Mr. Paulson: Well, if you insist and object to the abstract—

Mr. Leisure: (Interposing.) I do not want to object to the abstract, I want to check it with the bids.

Mr. Paulson: It just puts the Procurement Division to the extra trouble, I imagine they will oblige us by getting that other invitation.

Examiner Norwood: That is the understanding we have had previously with regard to receiving abstracts,—the agreement is that the original bids will be available to the respondents if they want them. Will that be the case this time, Mr. Hayghe?

The Witness: I beg your pardon.

Examiner Norwood: Those abstracts may be referred to by the respondents, if they wish?

The Witness: Surely.

4873 Mr Paulson: If agreeable to Mr. Hayghe, we will promise to have those bids produced here.

Mr. Leisure: Your Honor, with regard to 1055, that is Exhibit 1055 being offered, it is an abstract. As I recall, we have a stipulation, Mr. Wooden and I entered into a

stipulation to submit abstracts without furnishing originals. This is an abstract, I am told, of original documents; may I ask the witness about it?

Examiner Norwood: Yes.

By Mr. Leisure:

Q. Is that right?

A. That is true, yes, sir.

Q. And when this invitation was made, there had been a prior invitation which had been rejected?

A. That is true.

Q. Was it rejected because the original bids contained the so-called "control clause"?

A. No, the rejection was because the special clause inserted by the Procurement Division, which I referred to yesterday, was disregarded.

Q. It was disregarded in what way?

A. That bids purporting to show the delivered cost to the Government at destination, were again submitted

4874 just as in previous bids.

Q. And that clause in the Government invitation was ignored?

A. That is true.

Q. So then you sent out new invitations?

A. New invitations, together with an explanation as to the reason for the rejection of the original.

Q. And 1055 represents that transaction?

A. Yes.

Q. An abstract of that transaction?

A. Of the second transaction.

Q. Did the new invitation also contain the same provision as the first?

A. It did.

Q. The first clause that you described?

A. It did.

Q. Was it again ignored in this bid?

A. It was.

Q. And were the bids accepted in this instance by the Government, the one that is represented by 1055?

A. They were.

4875 Q. Do you know where this was made up, Mr. Hayghe? Was it made up under your direct supervision so that you know it is correct?

A. No, sir.

Q. Where was it made up?

A. In Montgomery, Alabama.

Q. So you never saw the bids or the abstract when it was being made up?

A. To the best of my recollection I saw the bid, but I did not see the original abstract.

Mr. Leisure: Well, under our stipulation, I am supposed to take the abstract, your Honor.

(COM. EX. 1055 was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. Leisure asked you if you advised these various bidders why their bids were rejected and you said in your answer you did. I show you a paper marked Commission's Exhibit for identification 1056, and ask you to state what that is, Mr. Hayghe?

A. This is a letter of January 15 from the Assistant State Procurement Officer for Alabama at Montgomery to the respondent bidders to invitation 16876, notify-
4876 ing them that their bids had been rejected and stating the reason for the rejection.

Q. To whom is that addressed?

A. This is addressed to the Lone Star Cement Corporation.

Q. Was an identical letter addressed to each of the other bidders?

A. Those were the instructions to the State Procurement Officer and we may assume that they were complied with.

Q. Is that the original you have there?

A. This is a certified copy, certified to by the Assistant State Procurement Officer, whose signature I recognize.

Mr. Paulson: I offer Exhibit 1056 in evidence.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 1056 was offered and received in evidence.)

By Mr. Paulson:

Q. Did the bidders bidding in response to invitation 16876, the case now which we have been talking about, bid identical amounts?

Showing you Commission's Exhibit 1054-A, the Pennsylvania Dixie Corporation's bid, will you look at that and state what the amount of the bid was?

4877 Q. Is that the first or the second letting?

A. This is the first invitation. The Penn-Dixie Cement bid $2.25 per barrel government destination cost and $2.34 per barrel f. o. b. destination.

Q. Will you give the total amount?

A. The government cost to destination was $1,874.25; f. o. b. destination $1,949.22.

Q. And while you have that bid before you, will you read, for the record, the clause which the government inserted in its effort to get an f. o. b. mill price?

A. "Bids purporting to name a guaranteed delivered cost to the government at destination with the provision that cost at the mill may be determined by deducting from such delivered cost the lowest freight rate available, government shipments to move under government bills of lading, have been designated as irregular bids and will not be considered."

Q. Showing you Commission's Exhibit 1054-G, which is the Lone Star Cement Corporation's bid, will you state what the amount bid by that company is?

A. The bid of the Lone Star—government cost to destination $1,874.25; f. o. b. destination, $1,949.22.

Q. Is that identical with the Pennsylvania Dixie?

A. Identical.

Q. Showing you Commission's Exhibit 1054-M, 4878 the Patrick Lumber Company bid, will you state what the amounts bid by that company are?

A. The Patrick Lumber Company offered one price only—f. o. b. destination, $1,949.22.

Q. Is that identical with the destination price bid by the other two companies?

A. Identical with the f. o. b. destination price bid by the other two.

Q. Showing you 1054-S, the Universal Atlas Cement Company's bid, will you state what price was bid by that company?

A. The destination cost to the government—the total cost is not shown—but the price per barrel is $2.25 and the f. o. b. destination total cost is $1,949.22.

Q. Is there any variance there between that bid and the other bids?

A. No. The price per barrel destination cost to the United States Government is identical with the Penn-Dixie and Lone Star.

Q. Showing you Commission's Exhibit 1054-X, the Lehigh Portland Cement Company's bid, will you state what was bid by that company?

A. The total amount, destination cost to the government, $1,874.25; the f. o. b. destination cost $1,949.22.

Q. Is that identical with the other bids?

A. Identical with the Lone Star.

4879 Q. Show you Exhibit 1054-CC, the Signal Mountain Cement Corporation's bid, will you state what was bid by that company?

A. In this case also the total destination cost to the government is not indicated, but the price per barrel is stated as $2.25; f. o. b. destination total cost $1,949.22.

Q. Showing you Commission's Exhibit 1054-HH, the Alpha Portland Cement Company's bid, what did that company bid?

A. Destination cost to the government $1,874.25; f. o. b. destination cost $1,949.22.

Q. The Georgia Cement & Products Company bid: What was bid by that company?

A. Destination cost to the government $1,874.25; f. o. b. destination cost $1,949.22.

Q. The Hermitage Portland Cement Company?

A. Destination cost to he government $1,874.25; f. o. b. destination cost $1,949.22.

4880 By Mr. Paulson:

Q. Did any of the bidders observe the clause which you have inserted?

A. They ignored it in each case.

Q. I believe you said that the project was readvertised under Exhibit 1055, which is an abstract. Is the abstract of the bids received in response to the second invitation?

A. That is true.

Q. I am showing you Commission's Exhibit 1055; can you tell from looking at that abstract whether or not the bids that you received in that instance were identical?

A. No, they were not; Penn-Dixie quoted a lower price, f. o. b. destination than the other respondents to the invitation.

Q. Were the others identical,—were the other bids identical?

A. The other bids were identical with the first f. o. b. destination $1,949.22.

Q. Who were the bidders?

A. The Lone Star; Georgia Cement & Products; National; Signal Mountain; Hermitage; Lehigh, Universal Atlas; and Alpha Portland.

Q. Do you know what that abstract was made up, was it made up after the letting or before the letting?

4881 Can you tell there the date of the opening and the hour of the opening?

A. The date of the opening is stated here January 24, 1938; the hour is not indicated.

Q. Do you happen to know what the hour of the opening was?

A. My recollection of the correspondence in the case stated 2 o'clock as the opening hour,—2 o'clock p. m.

Q. Now, was that abstract prepared as a record of the bids, as they stood say on the morning of the 24th, or was that abstract prepared to show the status of the bids after the award?

The Witness: Well, the abstract could not be prepared until after the bids were opened, I would say.

By Mr. Paulson:

Q. Showing you Commission's Exhibit marked for identification 1057, will you state what that is, Mr. Hayghe?

A. This is an original telegram from the Pennsylvania-Dixie Cement Corporation, dated at New York, Janu-
4882 ary 24, 1938, at 1:51 p. m., addressed to the Treasury Department, State Procurement Office, Montgomery, Alabama.

Q. Does it relate to the bid, or the Pennsylvania-Dixie Company's bid on the project we have been discussing?

A. It specifically refers to Invitation 17,120.

Mr. Paulson: I offer Exhibit 1057 in evidence.

Examiner Norwood: Is there any objection?

Mr. Hershberger: No objection.

Mr. Leisure: No objection.

(COM. EX. 1057 was offered and received in evidence.)

Q. I do not remember, Mr. Hayghe, whether I asked you when I showed you Commission's Exhibit 1055, which is the abstract covering this particular project, whether the Pennsylvania-Dixie Company bid was lower or higher than the bids by the other companies,—by the other bidders?

A. It was lower.

Q. I am showing you Commission's Exhibit 1057, which was just received; will you state for the record what that telegram is about?

A. May I read the entire telegram into the record?

Mr. Paulson: Yes; I suggest it go in.

4883 Examiner Norwood: It is already in evidence; I can see what it is about.

(The exhibit was handed to the Examiner.)

Examiner Norwood: The change that they directed by this telegram, did that bring their bid up to the same amount as the other bids?

The Witness: That is my recollection; it brings it up to the same price.

Examiner Norwood: I just asked for my information, because the record does not show whether it did or did not. Go ahead.

The Witness: May I answer your direct question?

By Mr. Paulson:

Q. Yes; what did Penn-Dixie advise in that telegram, Mr. Hayghe?

A. Penn-Dixie requested in this telegram to change the unit price on Item 1 to read $2.28 per barrel and the alternate bid to read $2.34 per barrel, it having the effect of increasing their price to the same figures as the other bidders responding to the same invitation.

Q. Now, I have in my hand here a letter which was addressed to you by myself, and I will just show it to you to refresh your memory, because I want to ask you how many minutes before the bids were to be opened, was this telegram sent?

A. The telegram was posted nine minutes prior 4884 to the opening hour on Invitation 17,120.

Cross-Examination by Mr. Leisure.

Q. Mr. Hayghe, you just pointed out to Mr. Paulson there was nine minutes difference, as shown by this exhibit,—nine minutes difference between the sending of the telegram and the time of the opening, did you not?

A. Yes, sir.

Q. Now, the difference in time would be an hour and nine minutes difference, would it not?

A. That is true.

Q. On the special effort that was made, as you will recall you were asked by the attorney for the Commission yesterday, when Mr. Paulson asked you about the special effort that was made in Alabama, in regard to,—I do not remember the exhibit number,—do you remember your testimony of yesterday when you said a special effort was made?

A. Yes.

Q. Are you familiar with what I am referring to?

A. Yes.

4885 Q. Now, the clause—I am told that that is Exhibit 1054—the clause in that invitation contains what we have referred to here as the government control clause, did it not?

A. That is true.

Q. And it provided that bids would be considered irregular under the circumstances described in the control clause?

A. That is true.

Q. There was nothing about the Procurement Division asking for f. o. b. mill bids or f. o. b. destination bids that was unusual? They have done that in the past, have they not?

A. The invitations were always framed that way.

Q. There was nothing new about the clause in the invitation that if the bids were contrary to this control clause, they would be considered irregular?

A. That was a new feature in this particular invitation.

Q. Had not they, for a considerable length of time, inserted the so-called government control clause in the invitations, saying that these bids would be considered irregular—

A. (Interposing.) No, sir; they had not. This is the only case to my recollection where that clause was ever inserted.

Q. For at least three years, has not the procurement Division sent out certain invitations stating in effect, without exactly describing the wording, that unless the provisions provided for herein are answered, the bids will be considered irregular? Has not that been going on for

4886 at least three years?

A. I would not like to testify there, but as I stated before, to the best of my recollection, there never has been a clause of this particular type or framed for this particular purpose in previous bids. There have been similar clauses to the effect that a bidder not complying with all the terms of the invitation is submitting a qualified bid.

Q. Exactly. Now, what particular languages was there in this government control clause that was different from the ones that had been used prior thereto?

A. I could not say without seeing the actual wording of

the standard clause in the regular contract. As a matter of fact, this particular clause was worded by myself, and I am reasonably sure there was never an identical clause inserted.

Q. But you are familiar with the fact that a similar control clause had been in use by the Procurement Division for at least three years?

4887 The Witness: I believe I previously testified this clause that had been in use, to the best of my recollection, was simply one that stated that unless the bidder complied with all the terms of the invitation, his bid was a qualified bid.

By Mr. Leisure:

Q. But you did make awards, however, after the bids had been submitted as irregular bids, under that invitation, did you not?

A. This particular invitation?

Q. No, many times.

4888 A. I could not testify as to that.

Q. You said a moment ago that you prepared this last control clause.

A. Yes, sir.

Q. How long ago was that?

A. I think it was during the first part of January.

Q. Of this year?

A. Of this year; yes, sir. I could not say definitely.

Q. Had you been in contact with any member of the Federal Trade Commission prior to that time?

The Witness: I was.

By Mr. Leisure:

Q. Was that control clause prepared under the direction or the assistance of any one from the Federal Trade Commission or advice of any one from the Federal Trade Commission or at the request of any one from the Federal Trade Commission?

4890 The Witness: The clause was worded as the result of conferences with members of the Federal Trade Commission but not, however, under their immediate direction nor was that wording suggested. I was—

Mr. Wooden: Pardon me—

4891 The Witness: The purpose in qualifying the invitations with the clause as it stands, was to secure, if possible, f. o. b. plant prices. The clause, as I said

before, was worded by myself independently of any suggestions as to the exact wording on the part of any member of the Federal Trade Commission.

Mr. Wooden: May I ask a question? When you say "member of the Federal Trade Commission" do you mean one of the Commisisoners of the Federal Trade Commission?

The Witness: No, sir; I have used the term in the same sense as Mr. Leisure—I mean employees.

By Mr. Leisure:

Q. Tell us who it is; there is no secret about it; who were you conferring with?

A. I beg your pardon?

Q. Tell us who you were conferring with, because there is no secret about it.

A. Mr. Paulson.

4892 *Redirect Examination by Mr. Paulson.*

Q. Mr. Hayghe, were the conferences between you and me responsible entirely for the test case you made there in Alabama?

The Witness: I think it was, yes.

4893 By Mr. Wooden:

Q. Referring to the so-called control clauses of the
4894 Procurement Division, and the so-called control clauses of the bidders, which of those control clauses were controlling?

Mr. Leisure: I am not quite sure as to the meaning of that question; if it means what I think it means, I object to it.

By Mr. Wooden:

Q. Which of those control clauses were controlling in the actual conduct of your affairs in the purchasing of cement?

Mr. Leisure: That is a conclusion on his part, Your Honor, what is controlling. He can tell what was done or what happened, what the facts were.

Examiner Norwood: I think not, which one he regarded as controlling his action, and which one actually did control his action.

Mr. Leisure: Which one controlled his action; I have no objection to that question.

The Witness: The control clause inserted by the bidder was absolutely controlling, whereas as a matter of fact the control clause inserted by us evidently did not
4895 control anything.

W. E. HARKNESS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

I am State Procurement Officer in Florida for the Procurement Division of the United States Treasury Department and have been since September 23, 1936. My
4896 duties are to purchase all materials required by the Florida Works Progress Administration and the Resettlement of Farni Security Administration in the State of Florida, including the purchase of cement.

Q. What is the method of purchase?

A. A formal invitation to bid.

Q. Do you receive bids direct from manufacturers?

A. We did.

Q. You say you did?

A. Yes, sir.

Q. You said your term of office began January, 1936?

A. No, September 23, 1936.

Q. September 23, 1936?

A. Yes, sir, and I was also there from July 1, 1935, to July 20, 1935.

Q. When you began your service there did you receive bids direct from manufacturers?

A. Yes, sir.

Q. Do you now receive bids direct from manufacturers?

A. No, sir.

Q. When did the manufacturers cease bidding?

A. On or about December 27, 1937.

Q. Do you know prior to September 23, 1936,
4897 whether or not the manufacturers had refused to bid in response to invitations for the purchase of cement in the State of Florida?

A. They had not.

Q. To the best of your knowledge did they always bid direct up to and until December 27, 1937?

A. Yes, sir.
Q. What cement companies serve the State of Florida?
A. I have a list, I do not know whether I can recall them; can I look at the list?
Q. Yes.
A. (Referring to list.) Universal Atlas Cement Company; Lehigh Portland Cement Company; Penn-Dixie Cement Company; Lone Star Cement Company; Florida Portland Cement Company; Alpha Portland Cement Company; National Cement Company, and Georgia Cement & Products Company, and there was one other company, Southern States, bid at one time, but they only bid for a short while.

4898 Q. Is there a cement mill located in the State of Florida?
A. Yes, sir.
Q. Which company?
A. Florida Portland Cement Company.
Q. Is that a local company?
A. Located at Tampa, Florida.
Q. Is that the only mill in the State of Florida?
A. Yes, sir.
Q. Are you familiar with the method of bidding in neighboring States, as to manufacturers bidding direct in, say, Georgia?
A. I have been informed that they did not bid direct in the State of Georgia.
Q. Or South Carolina?
A. South Carolina or Alabama, in fact I have been informed that Florida was practically the only State

4899 that the manufacturers bid direct.
Q. Do you have any explanation for that?
The Witness: The salesmen of the cement companies at various times have given me that information, but I would have to trust my memory on just which salesman it was.

4900 By Mr. Paulson:
Q. Gave you what information; what information did you receive from representatives of the manufacturers?
A. That the salesmen just told me that their companies would not bid in the State of Georgia or the State of Alabama or any other State,—any other southeastern State.
Q. Mr. Harkness, are there any ports in the State of Florida?

A. Any reports?

Q. No; any ports in the State of Florida?

A. Yes, sir.

4901 Q. What are the main ports in the State of Florida?

A. Jacksonville, Tampa, Miami, and Pensacola.

Q. Did you find the prices were different in these port cities than the prices in the interior in connection with the purchases of cement?

A. Yes, sir.

Q. Are they lower?

A. Lower.

Q. How much lower?

A. I would say considerably.

Q. Now, did you have any difficulty in getting the benefit of land grant rates in your purchases of cement in the State of Florida?

A. I had difficulty in getting full advantage of the land grant rates.

Q. Did the manufacturers bid f.o.b. mill?

A. They gave us a way of determining our price f.o.b. mill. They did not bid outright a mill price.

Q. Was it possible, then, to use the government bill of lading?

A. Yes, sir.

Q. With the result that you had difficulty in getting the full benefit of it? Will you explain that?

A. When we asked for an f.o.b. mill price or f.o.b. origin price, all the manufacturers would bid a cer-
4902 tain price from which we were supposed to deduct the land grant freight rate to arrive at our cost at the mill or at origin.

Q. How did that work out as a practical matter?

A. It gave the government the benefit of, about, I would say, 50 percent of the land grant privilege. I have an example here of just how it works out.

Q. Will you show me that?

A. That (exhibiting) is the way I worked it out.

Q. Have you the invitation?

A. Yes, sir.

By Mr. Paulson:

Q. Will you explain the documents you have before you, Mr. Harkness?

A. This (exhibiting) is an invitation to bid for 132 barrels of cement for delivery at Inverness, Florida.

Mr. Leisure: Would you mind marking it for identification so we will know what exhibit he is talking about?

The Witness: This (exhibiting) is my original file and only file.

4903 Examiner Norwood: Mark the invitation 1058 and the bids A and B.

The Witness: Here is the invitation that was sent out (exhibiting).

Mr. Paulson: I think that is the only one we will use.

Examiner Norwood: Is that one sheet or two sheets?

The Witness: Two sheets.

Examiner Norwood: Mark that 1058-A and B. Do you have something else there—the bid itself?

The Witness: That is the bid. The invitation is your bid form.

Examiner Norwood: Then, A and B cover it.

4904 The Witness: Yes, sir.

By Mr. Paulson:

Q. Showing you Commission's Exhibit marked for identification 1059-A and B, you can proceed with your explanation.

A. This is invitation 8457, asking for bids on 132 barrels of cement for delivery at Inverness, Florida. The invitation requests bids f.o.b. point of origin and f.o.b. destination.

Mr. Leisure: Have you the date of opening there, please?

The Witness: The date of opening was September 17, 1937.

By Mr. Paulson:

Q. What was the quantity involved?

A. 132 barrels.

Q. Is this part you have, a complete invitation for bids?

A. Yes, sir.

Q. Then, this is sufficient.

A. But it is not a complete bid.

Q. Did this company to whom this invitation was sent, respond?

A. Yes, sir.

Q. And in what manner did they respond? Did they bid f.o.b. mill?

A. Yes, sir, and—well, they bid f.o.b. mill and f.o.b.
4905 destination.

Q. Was there a control clause attached to the bid f.o.b. mill?

A. One inserted by themselves.

Q. Would you say it was a true f.o.b. mill bid, then?

A. No, sir.

Q. Now, your original statement was that you thought you were deprived of the land grant rates?

A. Yes, sir.

Q. Will you proceed, then?

4906 All bids received in response to this invitation bid a price of $2.44 a barrel f.o.b. destination, and all bids received in response to the invitation specified a bid of $2.26 per barrel, f.o.b. point of origin, with the provision that from this price we could deduct the land grant or commercial freight rate, from that price, whichever price was the lowest.

By Mr. Paulson:

Q. That was not exactly an f.o.b. point of origin price then, it was Government destination cost, is that right?

A. That is right, yes, sir.

Examiner Norwood: What was their f.o.b. mill price?

The Witness: $2.26 per barrel, less the cost to the Government of transportation from the origin to the destination.

Mr. Paulson: Whose bid was that?

Mr. Leisure: May we have the names of the bidders?

By Mr. Paulson:

Q. Whose bid was marked for identification there, what company?

A. National Cement Company.

Q. Located where?

A. Birmingham, Alabama, shipping from Ragland, Alabama.

Q. Was that the company that received the award?

4907 A. Yes, sir.

Q. Now, what is the commercial rate from Ragland to what was the town?

A. Inverness, Florida.

Q. To Inverness; what was the commercial rate?
A. It figures out 95 cents a barrel.
Q. What is the Government rate?
A. 57.65 cents a barrel.
Q. What was the price bid; what was the f.o.b. destination price?
A. $2.44 per barrel.
Q. How much was the company net per barrel?
A. $1.49 per barrel.
Q. What was the Government destination price cost,—Government destination cost?
A. $1.6835.
Q. Is that what was on that bid?
A. No.
Q. What was the figure on the bid?
A. $2.26 per barrel.
Q. What was the land grant rate; what is the mill net in that instance?
A. $1.6835 per barrel.
Q. And the difference between the mill net in that instance and the mill net is the f.o.b. destination, less
4908 commercial freight rate?
A. Yes sir, 19.35 per barrel.
Q. Which one is more?
A. The Government destination price.
Q. Does that mean that the mill net is more when it is sold on a Government destination cost than it would be had it been sold f.o.b. destination, commercial freight?
A. Yes, sir.
Q. Is that how you reached your conclusion that the Government was deprived of the land grant rate?
A. Yes, sir.
Q. Do you consider the true price to be the f.o.b. destination price or price less commercial freight?
A. Yes, sir.
4909 Mr. Paulson: Your Honor, one sheet was not marked in connection with Exhibit 1058-A and B, which in fact is a part and should be marked with it; may it have that mark, 1058-C?
Examiner Norwood: What is that?
The Witness: A rider that was attached to our invitation.
(COM. EX. 1058-C was offered and received in evidence.)

Mr. Leisure: I am going to have to have the names of the other bidders, Your Honor.

By Mr. Paulson:

Q. Will you read for the record the names of the other bidders?

A. The other bidders on Invitation No. 8457, were Georgia Cement & Products Company; Alpha Portland Cement—

Mr. Paulson (interposing): Will you read the prices bid, the amount bid in connection with each name?

The Witness: Yes, sir. Georgia Cement & Products Company $2.44 f.o.b. Inverness, Florida; $2.26 a bar-
4910 rel less the Government land grant freight rate from Ragland, Alabama.

By Mr. Paulson:

Q. Suppose you use this terminology as to the second amount bid, in that instance, $2.26 Government destination cost.

A. All right; that would be Georgia Cement & Products Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

Alpha Portland Cement Company, $2.44 per barrel, f.o.b. destination; $2.26 per barrel Government destination cost.

Lehigh Portland Cement Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

Penn-Dixie Cement Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

National Cement Company, $2.44 f.o.b. destination cost; $2.26 Government destination cost.

Universal Atlas Cement Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

Florida Portland Cement Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

Lone Star Cement Company, $2.44 f.o.b. destination; $2.26 Government destination cost.

Mr. Leisure: Mr. Paulson, he has not given the freight rate, the Government freight rates on the other, and
4911 we would like to get those.

Q. What was the basis of award in this case, Mr. Harkness?

A. It was decided by lot.

Q. The bids were identical?

A. Yes, sir.

4912 Q. Will you read the freight rates from the other shipping points; do you have them there?

A. Yes, sir.

Examiner Norwood: That is the commercial rates?

The Witness: I have the commercial and land grant.

Mr. Paulson: Commercial and land grant?

The Witness: From Ragland, Alabama, all of these rates are, to Inverness, Florida, Ragland, Alabama, applies to Georgia Cement & Products Company, National Cement Company, and the rate is, commercial rate, 25 cents per hundred; land grant rate .15172. Phoenixville, Alabama, which applies to Alpha Portland Cement Company, the rate is 24½ cents commercial; land grant is .14728.

Mr. Leisure: Is that shown there per barrel?

The Witness: These rates are per hundred pounds.

Mr. Leisure: The first one that you gave is per barrel.

The Witness: Yes, sir, we figured it at 380 pounds to the barrel.

By Mr. Hershberger:

Q. You do not have these other figures the same way?

4913 A. Not by barrel; yes, I have, too.

By Mr. Leisure:

Q. Let us have them, then it will be just the same.

A. No, I am sorry, I have not got the rates figured out on a barrel basis; I have the total cost per barrel after adding or deducting the freight rate from the price.

Mr. Paulson: Read the figures.

Examiner Norwood: Go ahead.

The Witness: From Boyles, Alabama, which applies to Lehigh Portland Cement Company, the commercial rate is 24½ cents per hundred; .13381 per hundred.

Clinchfield, Georgia, which applies to Penn-Dixie Cement Company, the commercial rate is 19½ cents per hundred; .15476 per hundred.

Examiner Norwood: The last figure is the land grant rate?

The Witness: Yes, sir.

From Leeds, Alabama, which applies to Universal Atlas,

the commercial freight rate is 24 cents per hundred pounds and the land grant rate is .15719 per hundred.

From Tampa, Florida, which applies to the Florida Portland Cement Company, the commercial rate is 13 cents per hundred; the land grant rate is .12787 per hundred.

From North Birmingham, Alabama, which applies 4914 to the Lone Star Cement Company, the commercial rate is 24½ cents per hundred; the land grant rate is .13409 per hundred.

That covers this bid.

By Mr. Paulson:

Q. Did you ever find it necessary to attempt to substitute a government bill of lading for a commercial bill of lading in your State?

A. What do you mean by substitute?

Q. After shipment had arrived.

A. No, sir.

Q. What effect would it have upon your office there if manufacturers refused to bid and you were left to secure bids from dealers?

A. It would mean that we would have to secure bids from dealers which we are doing now after the manufacturers refused to bid.

Q. Can you obtain the benefit of land grant rates when you receive bids exclusively from dealers?

A. No, sir.

Q. Has that meant a material increase in the cost of cement in the State of Florida?

A. Yes, sir.

Q. Were you engaged in the purchase of materials prior to your term of office as State Procurement Officer in Florida?

4915 A. Yes, sir.

Q. In what connection?

A. I was purchasing agent for the Florida Emergency Relief Administration.

Q. What was the term there?

A. From March 12, 1934, to January 1, 1935.

Q. Was the method of purchase similar to the method of purchase under the Procurement Division set-up?

A. Yes, sir.

Q. You invited bids from manufacturers and dealers or manufacturers alone or how?

A. We invited bids from both manufacturers and dealers.

Q. Did you receive them from both manufacturers and dealers?

A. Yes, sir, but not all the time. There was one—

Q. (Interposing.) Explain that, please.

A. There was one period that the manufacturers refused to bid, at which time we were compelled to buy through the dealers.

Q. What was the approximate date there?

A. The latter part of 1934.

Q. What happened to change the policy there?

A. We secured one manufacturer's consent to bid. That is the Lehigh Portland Cement Company decided to bid direct—

Q. (Interposing.) What difference did that make?

A. That automatically required the other manu-
4916 facturers to bid if they were to secure any of that business.

Q. Did they bid direct ever since? You said the Lehigh began bidding direct?

A. Yes, sir.

Q. Do you know whether Lehigh bid lower than the dealers in that instance?

A. Yes, sir.

Q. Did you find when you were left to receive bids from dealers, that the cost of cement to the government was higher than when you received bids from manufacturers?

A. Yes, sir.

Q. Can you make a general statement as to how much higher?

A. From one cent a barrel to 25 cents a barrel higher, plus the loss to the government in not being able to avail themselves of the land grant rates.

Q. Have you any idea what that last item would amount to as the loss to the government, because they were not able to get the benefit of the land grant rates per barrel?

A. It would average around 70 cents a barrel. No; the average freight on cement to Florida is 70 cents a barrel and the loss would be approximately 50 percent of that, which would be around 35 cents a barrel.

Q. Is your State well served by land grant routes?

A. Yes, sir.

Q. What are the main shipping points for cement
4917 around the State of Florida?

A. Tampa, Florida, and Leeds, and Ragland.

Q. Is there a land grant route from Leeds and Ragland into the State of Florida?

A. Yes, sir.

Q. Now, under this present policy or present method of bidding, you are deprived of the savings and costs which would occur if the shipments were moved under government bills of lading?

A. Yes, sir.

Q. You have in mind, Mr. Harkness, the relative prices in any particular State or town of Florida prior to the shift in policy—shift in method of bidding—by the manufacturers from the through-the-dealer method to the
4918 direct method? Can you think of a town in Florida, for instance, for which you purchased cement direct from the manufacturers and remember the price that you paid and tell us what you had to pay since that time?
4919 A. On our invitation to bid for 700 barrels of cement for Jacksonville, Florida, we first advertised to the manufacturers and did not receive any bid or bids. We readvertised it to the dealers and the low bid received was $2.20 per barrel.

Examiner Norwood: $2.20?

The Witness: Yes, sir—less 15 cents per barrel for cash payment within 15 days. We placed that order f. o. b. Jacksonville, Florida.

The manufacturer's price on cement on the same day—

Mr. Leisure: What date is this bidding?

The Witness: December 27, 1937—was $2.10 per barrel less 10 cents per barrel for payment within 15 days.

On the basis of that bid, which was accepted, the Government paid 5 cents a barrel more than the manufacturers' price and also were compelled to pay the commercial freight charges into Jacksonville, whereas, if the manufacturers had bid, as they had done heretofore, they would have received the benefit of the land grant rate from the point of origin to Jacksonville, Florida.

Examiner Norwood: Was not that dealer's price 15 cents more?

The Witness: I figured it 5 cents—$2.20 less 15,
4920 which makes $2.05 and the other was $2.10 less 10 cents, which is $2. which is 5 cents difference.

By Mr. Paulson:

Q. Was that a fairly representative case or an exception?

A. A fairly representative case.

Q. You have other cases there before you, have you?

A. Yes, sir.

Q. We will not take time to go into those. In what way did you learn of the manufacturers' change of policy in December, 1937?

A. First, by being informed by a representative of the Florida Portland Cement Company, Mr. Martin.

Q. How did he advise you?

A. He called at the office and advised that the Florida Portland Cement Company was changing their sales policy in the State of Florida immediately and that the other companies were going to do the same thing. I secured through some dealer—I am not able to give the name of the dealer—a circular letter which had been sent out by the Florida Portland Cement Company informing them of that change in their sales policy.

Q. Did you receive a same or a similar, or I should say, identical circular letter signed by any other cement company?

A. Yes, sir.

Mr. Leisure: Can we have that circular?

4921 Mr. Paulson: There happen to be two of those in evidence already, if I am not mistaken. I can not put my hand on the number of the exhibit.

Mr. Wooden: The Universal and the Florida Portland Cement Company circulars are in.

Mr. Paulson: Have you one there, Mr. Harkness?

The Witness: Yes, sir (handing to Mr. Paulson). I have a certified copy of one from Lehigh.

By Mr. Paulson:

Q. Showing you Commission's Exhibit, marked for identification, 1059-A and B, Mr. Harkness, what is that?

A. That is a circular letter dated December 20, 1937, signed by the Florida Portland Cement Company, F. M. Traynor, Vice President.

Q. Did you receive a similar, or I should say did you receive an announcement identical with that, or practically identical with that from any other manufacturer?

A. Yes, sir.

Q. What other manufacturer?

A. Lehigh Portland Cement.

Q. Did you receive one from all of the companies serving your State?

4922 A. No, sir.

The Witness: We only received one from the Florida Portland Cement Company and the Lehigh Portland Cement Company.

Mr. Leisure: Have you the Lehigh?

The Witness: I only have a certified copy of that.

Mr. Leisure: That is all right; is the date shown?

The Witness: Yes, sir.

Examiner Norwood: Are both of those the same date?

The Witness: Yes, sir.

Mr. Paulson: Do you want to see it?

Mr. Leisure: I just want to see the date they became effective.

(Mr. Paulson handed the papers to Mr. Leisure.)

By Mr. Leisure:

Q. One seems to have gone out on December 13, Mr. Paulson, and the other December 20.

A. Both of them have effective dates which are the same; both of them became effective December 20.

Mr. Paulson: I understand that 1059-A and B, I should say Commission's Exhibits marked for identification 1059-A and B, which is the announcement to the trade by the Florida Portland Cement Company, made as of

4923 December 20, 1937, is already in evidence as Commission's Exhibit 331-A and B, so it will be unnecessary to offer 1059-A, but I will offer 1060-A, B and C, which is Lehigh Portland Cement Company statement of policy, as of approximately that date.

Mr. Leisure: No objection.

(COM. EX. 1060-A, B, and C was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. Harkness, since the change of policy, let me say change in method of bidding by the manufacturer, have you in any instance received but one bid from a dealer in response to your invitations?

A. No, sir; in several instances we have only received two.

Q. And in several instances have you received three?

A. Yes, sir.

Q. Four?

A. Yes, sir.

Q. Did the dealers confine themselves strictly to their situs,—that is, to their location?

A. Yes, sir.

Q. Have you ever had a bid from a dealer outside of his location,—post office location?

4924 A. One time.

Q. Was he the low bidder?

A. Yes, sir.

Q. Do you have before you there any record of that?

A. No, sir.

Examiner Norwood: Where several bidders or several dealers bid, were the bids identical?

The Witness: How is that?

Examiner Norwood: Where you receive bids from two or more, were the bids identical?

The Witness: In the smaller towns they were, but in the port towns they were not,—in the larger towns.

By Mr. Paulson:

Q. Now, in this instance that you are speaking of, there where you received a bid from some dealer outside of the location of the project, did he get the award?

A. Yes, sir.

Q. Did he supply the cement?

A. I don't remember.

Q. Do you remember of any instance parallel to that where the dealer outside of a territory could not supply the cement?

A. No, sir.

Q. Is that the only instance where a dealer outside of his own location bid?

4925 A. That is all; that is the only one I recall.

Q. The rest of the bids from dealers have been confined to their home territory?

A. Yes, sir.

Q. Do you know whether in the instances in ports, where you received varying bids, whether or not the varying bids came from dealers handling foreign cement?

A. They did not come from dealers handling foreign cement, because they all know we will not accept bids on foreign cement.

Q. Is there a regulation against that?

A. Yes, sir; there is a law against it.

Q. Absolutely prohibiting the purchase of foreign cement?

A. The law provides that we can buy foreign cement if we can save over 25 per cent.

Q. Have you ever been able to do that?

A. No, sir.

Q. Have you made an effort?

A. No, sir.

Q. Have you checked up closely in the port cities to see whether foreign cement is offered to you so that you could purchase within the regulations?

A. No, sir.

Q. Have you ever heard of a check-up on the relative prices of foreign cement and domestic cement?

4926 A. The only prices that I have heard on foreign cement were rumors.

4927 Q. State as definitely as you can as to manufacturer's price; if they are all the same to your own knowledge, state so.

A. Well, it is common knowledge that all the cement manufacturers have the same price on cement.

Q. What were those prices in Jacksonville and Stark on a particular day, giving the date, please?

A. On January 1, the price—

Q. (Interposing) What year?

A. 1938.

Q. All right.

A. The price at Jacksonville was $2.10 per barrel.

Q. In bag or paper sack?

A. In paper, and at Stark, Florida, it was $2.27

4928 per barrel, in paper sacks.

Q. Which is closer to the mill, Stark or Jacksonville?

A. Which mill?

Q. To the Birmingham mill.

A. They are about equal distance.

Q. How about Tampa?

A. Stark is closer to Tampa than Jacksonville.

Q. Yet the price is higher?

A. Yes.

Cross Examination by Mr. Leisure.

Q. Let me put it again; in considering bids for the purpose of making awards, do you figure them on the basis of the laid down cost at the point of use; in other words, suppose you have got two f.o.b. mill bids, would you award the bid to the lowest of these two?

A. Yes, sir, after taking into consideration the cost of transportation.

Q. You would add the freight from each mill to destination?

A. Yes, sir.

Q. Under the statute you would be required to do that and give the award to the lowest bidder, would you not?

A. Yes, sir.

Q. Now, in connection with Exhibit 1058, are you familiar with that?

4931 A. That is the National Cement Company?

Q. That is the Inverness matter.

A. Yes, sir.

Q. Opening on September 17, 1937.

Q. Now, Mr. Paulson, with respect to that, asked you about what the true price was and I understood you to say that it was, in your opinion, the price of cement, the amount that bidders received after deducting the freight from destination, is that correct?

A. That is what I would consider the true price that the mill receives.

4932 Q. But you would not award on that basis?

A. No, sir.

Q. It would be the price—the destination most to the Government?

A. Correct.

Redirect Examination by Mr. Wooden.

Q. Mr. Harkness, in your answer about what you considered the true price, did you distinguish between

4933 the cost of cement and what you pay the mill for it and the cost of transportation of the cement from the mill to the job?

A. I only considered the total cost to the Government in making awards.

Q. Whom do you pay for the freight?

A. How is that?

Q. Whom do you pay for the freight?

A. The railroads.

Q. The mill does not receive any of that freight from you?

A. No, sir.

Q. All the mill receives from you is what you consider the true price or the net price of the cement—less the transportation?

A. That is correct.

4935 Examiner Norwood: 547-4B, 4C to 4J, inclusive, and 3W to 4A inclusive, are offered. Is there any objection to these exhibits?

Mr. Leisure: We have no objection.

(COM. EX. 547-3W to 4J, inclusive, was offered and received in evidence.)

Mr. Wooden: Your Honor, I would like to have the record show, I direct your particular attention to a portion of this exhibit.

Examiner Norwood: Give a synopsis on the record so that I can go back to it; I want to see what it relates to.

Mr. Wooden: This is a circular of July 24, 1935, from the Trustee of the Sixth District of The Cement Institute, enclosing three copies of the method of market-
4936-37 ing cement, and three copies of the interpretations in connection with Section 2 of the method of marketing cement on United States Government work.

I will now read the rest of it off the record.

The circular states that these plans and interpretations were unanimously concurred in by all members of the Southeastern District and approved at a meeting held in Knoxville, on July 17, 1935.

Now this method of marketing cement sets out the various classes of work which is considered as belonging to the dealer and not to the manufacturer, and under No. 1, United States Government work, it is stated:

"Purchases by Government agencies (except Federal Emergency of unemployment relief agencies), regardless of character of purchases and location of work."

Then opposite, under the heading of "How to sell",

"Sell direct, under specific sales contract, for period named in Government invitation; or for 15 days' delivery."

Then under (b):

"Purchases by Federal emergency or unemployment relief agencies, regardless of character of purchases and location of work: Sell through dealer. If dealer has written order on Government form, sell under specific sales order or contract, for period named in Govern-
4938 ment form; otherwise sell for 15 days' delivery."

There are various other classes containing appropriate directions as to how to sell various other classes that are set forth in the document.

J. E. McNAIR, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

I am State Procurement Officer for Mississippi and have held that position since July 1, 1935. My duties are the purchase of materials and supplies for the relief agencies in Mississippi. As part of my duties I am responsi-
ble for the economy in purchases made to protect
4939 the Government's interests. Cement is one of the commodities which I purchase.

Q. Do you have any idea how much cement has been purchased since you have been State Procurement Officer?

A. Yes, sir; approximately 220,000 barrels.

Q. What is the method of purchase used in the State of Mississippi?

A. We purchase—we advertise for bids, using the short form of government contract.

Q. You send your invitations to manufacturers as well as dealers?

A. Yes, sir.

Q. Do you receive responses from manufacturers?

A. Only in two cases.

Q. Can you give the approximate date when you received them?

A. October 19, 1935.

Q. Were those responses on the same project?

A. Just one minute. There are two projects, both located at Natchez, Mississippi.

Q. In general, would you say that you received responses from manufacturers, then?

A. No, sir.

Q. Does the fact you do not receive responses from manufacturers present any difficulties in the way of affecting savings to the government?

A. Well, we figure that it does in this respect,
4940 that we cannot move the cement on government bills of lading.

Q. What about the prices? Do you think there is any adverse effect from the price standpoint?

A. Well, the two cases that I have here, the cement quoted by the manufacturer was 20 cents a barrel under that quoted by the dealers.

Q. Do you interpret that to mean that the dealer is a mark-up?

A. In those two cases, I do; yes, sir.

Q. Do you have any knowledge as to other cases or the general situation as to prices?

A. No.

Q. You said that you thought you lost some advantage which the government would otherwise have had as a result of the manufacturers' refusal to bid; namely, you lost the advantage of land grant rates. How much would you estimate that you lost through that factor?

4941 The Witness: On the 220,000 barrels of cement, had it been purchased at the point of origin,—and that, we figure, is Birmingham, Alabama for the State of Mississippi,—we figure that the estimated saving to the government on account of land grant rates would be 6 cents per hundred weight, and, on the 82,720,000 pounds of cement purchased, that would total $49,632.

By Examiner Norwood:

Q. Now, tell us when those purchases were made?

A. Those purchases have been made from July, 1935, to the present time. March 15 was when the figures were made.

Q. From whom were they purchased?

A. From dealers all over the State of Mississippi.

4943 The Witness: The estimated average commercial freight rate for various destinations, State of Mississippi, from Birmingham, Alabama, is 17 cents per hundredweight, and the estimated saving to the Government on account of land grant is 6 cents, so then 6 cents multiplied by the number of pounds of cement purchased gives us the $49,632.

By Mr. Paulson:

Q. You selected for that estimate an average point in Mississippi?

A. Yes, sir.

Q. And figuring the land grant freight rate from Birmingham?

A. Birmingham, Alabama, which it is my understanding is a basing point.

Q. You arrived at that estimate from exact loca-
4944 tions there of your various purchases from a study you made?

A. Yes, I had my traffic section check the various rates, commercial rates to points throughout the State.

Q. And they took an average?

A. They took an average of that?

By Mr. Paulson:

Q. Mr McNair, did you ever have occasion to purchase a quantity of cement for a project on a sanitorium in Mississippi?

A. Yes, sir.

4945 Q. When, or about when were the invitations mailed out for this project?

A. I believe it was December of 1935.

Q. Do you remember the quantity involved?

A. There were two purchase orders, one for 4,388 barrels and the other for 2,100.

Q. What was the project?

A. One project, as I remember it, was a street paving project at the Sanitorium, and the other was a sidewalk paving project.

Q. For the Sanitorium?

A. Yes.

Q. Who received the award, do you recall?

A. The Wood Material Company, I believe—Wood Lumber & Material Company at Mendenhall, Mississippi.

Q. Are they dealers in building material?

A. Yes, sir.

Q. Did they have the cement in stock in the warehouse, do you know?

A. No, sir, it is my understanding that they did not.

Q. Did you have a policy, or an established practice, with regard to making savings on freight which came into play in connection with this project?

A. Well, at that time, Mr. Myers, who was the traffic Clerk in the Mississippi State Procurement Office,
4946 endeavored to substitute Government bills of lading for commercial bills of lading, and in that way to save the Government some money.

Q. Did you have authority, as State Procurement Officer, to make that substitution?

A. Yes, sir.

Q. Did you have to obtain it from headquarters?

A. I did, yes.

Q. Before you could proceed?

A. Yes.

Q. What do you mean by "headquarters," Mr. McNair?

A. The Washington headquarters.

The witness identified Com. Ex. 1061A as a letter written by him to Mr. H. E. Collins, Assistant Director of Procurement Division in Washington on January 16, 1936. That was prior to the time that the purchase order was issued; the purchase order was issued on January
4947 23rd. It was at that time that the award was made.

Com. Ex. 1061 A has reference to the project "that we are discussing"; Com. Ex. 1061 B and C as an interoffice memorandum written by V. V. Myers, Traffic Clerk of Mississippi State Procurement Office to Mr. Kirby L. Swinney, Assistant Procurement Officer. It is and is made part of Com. Ex. 1061 A because "the opening sentence of this letter says: 'Attached is a copy of a memorandum supporting papers from V. V. Myers, Traffic Clerk.'" The witness says it was all part of the letter.

Mr. Paulson: I offer 1061-A, B and C, and in connection with the offer, I would like to state that I have in my hand four more documents dealing with this project about which the witness has been interrogated; all documents taken together give a complete picture of this transaction.

4951 Examiner Norwood: Can you identify this signature here of Meyers?

The Witness: Yes, I have the original memorandum in my files.

4952. Examiner Norwood: I am going to admit these subject to their being connected up as counsel has stated, with Exhibit 547-4C and other transactions.

4954 (COM. EX. 1061-A, B and C was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. McNair, it says in Exhibit 1061-A, which is a letter written by you to Mr. Collins, that you recommend "that this office be granted authority to substitute Government bills of lading in lieu of freight charges at destination, deducting commercial freight from the purchase order issued to the vendor, Wood Lumber & Material Company. Please advise us by wire your decision in this matter." Did you receive a reply from Mr. Collins or one of his assistants?

4955 A. Yes, sir, I received a telegram from Mr. Eagle.

Q. Is Commission's Exhibit marked 1061-D the reply?

A. Yes, sir.

Mr. Paulson: I offer it in evidence, Your Honor.

Q. Does 1061-D, which is the reply to your letter of Captain Collins, give you authority to go ahead and convert commercial bills of lading into a Government bill of lading?

A. Yes.

Q. And did you adopt that procedure or attempt to adopt that procedure?

A. Yes, sir.

4956 Q. Was that agreeable with the Wood Lumber & Material Company?

A. Yes, sir.

Examiner Norwood: Are you examining him on E, F, and G now?

Mr. Paulson: No, I am examining him on D. Exhibit D is offered.

Examiner Norwood: Is there any objection?

Mr. Leisure: That is a telegram I objected to.

(COM. EX. 1061-D was offered and received in evidence.)

By Mr. Paulson:

Q. Will you please explain how you would go about negotiating for the transfer of Government bill of lading for commercial bill of lading?

A. Now, you are getting into a traffic question, and I do not know much traffic. We had a man down there to handle that matter. He did contact the Wood Material & Lumber Company and it was agreeable with that

4957 company for him to substitute Government bills of lading.

Q. Do you happen to know whether it was preferable?
A. It was preferable on the part of the Government, yes.
Q. Was it preferable to the dealer, do you know; do you see any reason why it would be?
A. Yes, sir, it would be preferable to him.
Q. Why?
A. Because he would not be required to put up any money for the freight charges.

The witness identified Com. Ex. 1061 E as a letter
4958 from Wood Lumber & Material Company, signed by J. T. Wood, President, to "Mr. Kirby L. Sweeney," Assistant Procurement Officer, Tower Building, Jackson, Mississippi.

4960 (COM. EX. 1061-E was offered and received in evidence.)

Q. What were you advised by this letter marked Commission's Exhibit 1061-E, Mr. McNair?
A. I was advised by the Wood Lumber & Material Company that it would be satisfactory to substitute the government bill of lading for the commercial.
Q. What did you do then? What was the next occurrence in this transaction?
A. As I recall, the Wood Lumber & Material Company wrote a letter to my office and enclosed another letter which was informing us that they could not obtain—
Mr. Leisure: (Interposing) Let us have the letter.
Mr. Paulson: Can not he finish the answer?
4961 Mr. Leisure: No; he is telling us what is in the letter.

By Mr. Paulson:

The witness identified Com. Ex. 1061 G as a letter from Wood Lumber & Material Company, signed by J. T. Wood, President, to Mr. V. V. Myers, Jackson, Mississippi; Com. Ex. 1061 F as a letter from J. J. Bethune, Traffic Manager of Alpha to Wood Lumber & Material Company, of Mendenhall, Mississippi.

Mr. Leisure: As to the letter 1061-F, from the Alpha Portland Cement Company, I have no objection. As to 1061-G, it is a letter written on the Wood Lumber & Material Company's letterhead and signed by J. T. Wood, president, and it is addressed to a Mr. V. V. Myers. Here is a letter being offered between two third parties.

4964 (COM. EX. 1061-F and G was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. McNair, was that case at Sanatorium, an individual case or did you have other cases of a similar character?

A. I had one other case at Centreville, Mississippi.

4965 The witness identified Com. Ex. 1062 as a letter con-
4966 nected with the purchase of cement for a project, from L. B. Butts of the Illinois Central System, Chicago, Illinois, to V. V. Myers, Traffic Manager, Jackson, Miss. The letter came to his office in the regular course of business. Mr. Myers was the Traffic Clerk in his office.

Mr. Paulson: I offer it for the record.

Mr. Hershberger: Just one minute, if you please.

Mr. Leisure: I object to 1062, as incompetent, irrelevant and immaterial; it is a letter on the letterhead, or rather a photostat of a letter on the letterhead of the Illinois System, dated February 8, 1936, addressed to a Mr. V. V. Meyers, Traffic Manager, signed by a gentleman by the name of Butts, rather there is a typewritten signature of L. B. Butts. I do not know who Mr. Butts is, and it has not been shown in this proceeding so far that he is authorized

4967 to write letters on behalf of any of the respondents in this case. I therefore object to the letter being received in evidence.

Mr. Paulson: The letter was offered for a special purpose, Your Honor, and I take it the objection is not directed to the point in that instance; it was offered to identify a letter which I propose to request the respondents to produce,—a letter from one of the cement companies. It is offered for that purpose. Is there any objection to that?

Mr. Leisure: I do not know; I am not familiar with that practice.

Examiner Norwood: It will be received for the purposes offered.

(COM. EX. 1062 was offered and received in evidence.)

4970 By Mr. Paulson:

Q. Now, Mr. McNair, did you send invitations to manufacturers and dealers when you needed cement for a particular project?

A. Yes, sir.

Q. Did you ever send as many as one hundred invitations for any one project?

A. Yes, sir.

Q. When was that—in connection with what project?

A. It was in connection with the project at Rolling Fall, Mississippi.

Q. What was the date of the invitation?

A. October 31, 1935.

Q. And what was the amount of cement involved?

A. 1,620 barrels.

Q. Is that a large amount relatively speaking; that is, relative to the general purchases you made down there? Is that a large or a small amount?

A. I would say that it was large; yes, sir.

Q. It runs over the average in quantity?

A. Yes, sir.

4971 Q. Do you have a memorandum there showing a list of the companies and dealers to whom your invitation was sent?

A. Yes, sir.

Q. How many invitations were sent?

A. 107.

Q. How many replies were received?

A. Four.

Q. Do you have the original memorandum or a copy?

A. Here is the original right here (indicating).

Q. Do you have a typed copy of it too?

A. Yes, sir.

Mr. Paulson: Will it be satisfactory to counsel for the respondents if we mark for identification the typed copy instead of the original? Mr. McNair has expressed a desire to keep his originals.

In that connection I would like to say that in an 4972 off-the-record discussion—

Examiner Norwood: What is that? Is that 1063?

Mr. Paulson: That has not been marked yet.

In an off-the-record discussion, it was agreed between counsel for the respondents and counsel for the Commission that typed copies of Exhibits 1061-F and 1061-G could be substituted for the originals and if there is no objection now or if it is agreed to now, I would like to make that substitution, inasmuch as Mr. McNair would like to take the originals back with him.

Examiner Norwood: Is that agreeable?

Mr. Leisure: That is quite all right.

The witness identified Com. Ex. 1063 A, B, and C as Form M.S.O.P. No. 14 on which "we" list the names of firms to whom "we" send invitations to bid. It is not the form which was filled out in connection with the project about which witness has testified. This is "our" file to show to whom "we" sent invitations on the project
4973 about which witness has been testifying.

Mr. Paulson: I offer the exhibit for the record.

Examiner Norwood: How many sheets is that?

Mr. Paulson: Four sheets.

Examiner Norwood: Then it should be 1063-A, B, C and D.

Mr. Leisure: May I ask the witness a question about this exhibit?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. On 1063-A, I observe that you sent invitations to California. Was it the practice on Procurement Division work in the State of Mississippi, to solicit manufacturers as far away as California?

A. No, sir; it was not.

Q. Why was it done in this case?

A. We had been unable, except for the two cases I covered, to obtain bids from manufacturers and we decided to set up a test case and send invitations to all cement dealers and manufacturers.

Q. Did you think that would be a test case, shipping cement all the way from California to Mississippi?

A. We tried—we wanted to see what we would get.

Q. To see what you could get, you sent to all dealers in the country to see if they would answer?

4974 A. Yes, sir.

Examiner Norwood: That exhibit is a list of those manufacturers and dealers to whom the invitations went?

The Witness: Yes, sir.

4976 (COM. EX. 1063-A, B, C, and D was offered and received in evidence.)

By Mr. Paulson:

Q. Did you receive any responses to this invitation, Mr. McNair?

A. Yes, sir.

4977 Q. And who were they received from?

A. The H. L. White Lumber Company, the Hollendale Lumber Company; M. L. Verden Lumber Company and Service Lumber Company.

Q. Where were they located?

A. All in Mississippi.

Q. In what towns in Mississippi, or were they all in one town in Mississippi?

A. I will have to check with this to be absolutely sure on that. Hollendale Lumber Company is at Hollendale, Mississippi; M. L. Verden Lumber Company is at Greenville.

Q. How is that situated with respect to Hollendale, or whatever that town was there?

A. They are close together, I would say 15 or 20 miles apart, I do not remember just exactly the distance. H. L. White Lumber Yard is at Yazoo City, Mississippi; Service Lumber Company is at Rolling Fork.

Q. Where was the job?

A. At Rolling Fork.

4978 Q. Did you name the locations of the four companies, Mr. McNair?

A. At Rolling Fork; The Service Lumber Company.

Q. Were there two at Rolling Fork?

A. No, H. L. White is at Yazoo City; Hollendale Lumber Company at Hollendale; M. L. Verden Lumber Company at Greenville, and Service Lumber Company at Rolling Fork.

Q. What about the prices?

A. H. L. White Lumber Company and Hollendale Lumber Company quoted $2.78 a barrel; the M. L. Verden and Service Lumber Company quoted $2.73.

Q. Will you tell, or do you know to whom the contract was awarded?

A. To Service Lumber Company.

Q. Is that located where the project was located?

A. Yes, sir.

Q. Mr. McNair, did you ever receive a bid in connection with an invitation from a dealer located outside of the limits of the town where the project was located?

4979 Q. Let me change that to the "trading area" of the dealers in connection with that project.

A. Yes, I have, as far as the statement of the dealer to the effect that he was outside of the area.

Q. You have received a bid, you say, from a dealer located outside of the trading area of the project?

A. That is right.

Q. Can you tell me which project that was and when?

A. That was Works Project No. 16, at Jackson, Mississippi.

Q. What was the date?

A. December 30, 1935.

Q. Can you tell me the amount of cement involved there?

A. 417 barrels.

Q. Can you tell me how many bids you received?

A. I received four bids.

Q. Who from?

A. I will change that to three bids for cement.

Q. Who from?

A. From the Poplarville Hardware Company; Mississippi Material Company at Jackson, Mississippi—

Q. (Interposing): Where is the Poplarville company located?

A. At Poplarville, Mississippi; and Planters Lumber Company at Jackson.

4980 Q. Who was the low bidder?

A. Poplarville Hardware Company.

Q. Did you get the cement from the Poplarville Hardware Company?

A. I placed my order with the Poplarville Cement Company and paid them for the cement. Delivery was made—

Q. (Interposing): By whom?

A. I can not answer that question, but as far as my records show, the order went to the Poplarville Hardware Company and they were paid for the cement.

Q. Was there any controversy over this letting?

A. Yes, sir.

Q. What was the nature of the controversy, or what was the controversy?

A. I received a telegram from the Poplarville Hardware Company to the effect that companies refused to ship cement to Jackson.

4981 Q. Did that mean that the Poplarville Hardware Company could not,—might not be able to deliver?

A. Yes, sir.

Q. ~~What would you~~ do in that event?

A. In this particular case, I referred the matter to the Washington Procurement Office, I have the corre-
4982 spondence and the telegram, and I was instructed to inform the Poplarville Hardware Company that they must deliver.

Q. Do you know of your own knowledge how delivery was made then, since they could not buy the cement from the cement companies?

A. No, I cannot say that I know from my own knowledge how that happened.

Q. Did you have any instances of where you received only one bid in response to an invitation?

A. No, sir, I do not have any record of that.

Q. Do you have any as low as two?

A. Yes, sir.

Q. Many of them, in many instances were there only two bidders?

A. No, not very many.

4983 *Cross-Examination by Mr. Leisure.*

Q. Mr. McNair, when did you say you became State Procurement Officer?

A. July, 1935.

Q. What was your occupation prior to that time?

A. State Purchasing Agent for Emergency Relief Administration.

Q. How long had you been so occupied?

A. From July, 1934, to July, 1935.

Q. You mentioned a saving to the Government of 6 cents a barrel; how did you arrive at the saving of 6 cents a barrel?

A. That is an estimate that I had my traffic section make. I directed the traffic section to check the rates from Birmingham, Alabama, to various sections of the State.

Q. So that you do not know of your own knowledge whether or not you saved 6 cents a barrel or something else; you are relying on the figures of your traffic man?

A. Yes, sir.

Q. Did you secure the land grant rates from Birmingham to the actual destination to which they moved in these transactions—I thing you mentioned 220,000 barrels were purchased.

A. He took the rates that were filed in the office on

shipments from Birmingham to various sections of the State.

Q. To the actual destination points?

4984 A. Yes, sir.

Q. Was all of the business placed with mills in Birmingham. these 220,000 barrels that were purchased?

A. I would not say that they did; I could not very well answer that question.

Q. Then how would it be correct to say there was a 6-cent saving on that basis?

A. It is our understanding that Birmingham is the basing point for cement delivered into the Mississippi.

Q. There is only one basing point in Mississippi according to your understanding, and that is Birmingham?

A. Yes, sir.

Q. Would the saving have been more or less than 6 cents if you had used the land grant rates from the actual shipping points instead of the land grant rates from Birmingham?

A. I can not say that it would be more or less; in this particular case, I asked the traffic section to give me an estimate of the amount saved, and they took an average, as these figures show as an average saving.

Q. Now, they were estimated, as you described and all on the Birmingham base?

A. Yes.

Q. Now, as to the list of questions that Mr. Paulson asked you, with regard to exchanging bills of lading, the regulations themselves prohibited it, did they not;

4985 that is they prevent the application of land grant rates on shipments where title does not pass at the point of origin?

A. We received instructions from the Procurement Division in February of 1936 not to do that.

Q. Now, with regard to these total shipments, you said that between July 1, 1935, as I have it, and March 1, 1938, your office bought about 220,000 barrels?

A. Yes, March 15, 1938.

Q. How much cement was bought at a time on

4986 these different projects?

A. It ran from a few barrels—in one case it was 4,000 barrels.

Q. But by and large, they were small purchases, usually?

A. No; I would not say that because—

Q. Well, it was cement to be used in a variety of local projects, was it not?

A. Yes, sir.

Q. Culverts and bridges?

A. I would say it comes nearer to being a car shipment most of the time, which would be 132 barrels.

Q. It comes nearer to be a carload shipment?

A. Yes, sir.

Q. I think we can agree on that. Now, as a matter of fact, practically all these purchases, Mr. McNair, were made to provide for emergency relief work, were they not?

A. Yes, sir; they were for the Works Progress Administration.

Q. Well, would you effectuate the purpose by purchasing your materials from the local dealers instead of from the manufacturers outside of the State?

A. No, sir.

Q. You would not?

A. Wait. Let me get that question straight. What do you mean?

4987 Q. I asked whether or not you would have assisted this emergency relief situation in any way by making your purchases from local dealers instead of manufacturers outside of the State?

A. No, sir.

Q. You do not think that would help any if the dealers in the State had made some commissions?

A. No, sir.

Q. It would not help the relief proposition?

A. No, sir.

Q. You came to that conclusion, or otherwise you would not have proceeded in that way, but if you could have bought all the cement from the Manufacturers, the Mississippi dealers would have lost business at least to the extent of 220,000 barrels of cements?

4988 A. That is correct.

Q. If the Government had bought all its material direct from the manufacturers, the deals who are in the business of selling those materials would be deprived of a large amount of business during that period of time, would they not?

The Witness: That is correct.

4989 Q. Referring to Exhibit 1063, which describes the projects on which invitations were sent to all cement manufacturers in the country—do you remember that?

A. Yes, sir.

Q. The award was made to a dealer at a price of $2.73 a barrel, I believe you said?

4990 A. Yes, sir.

Q. Could you understand why you got no bid from San Francisco manufacturers if you knew that the freight rate would be from six to eight dollars a barrel from San Francisco?

Mr. Wooden: By rail or water?

The Witness: I do not know why I did not get any bids. All I know is that I got but four.

By Mr. Leisure:

Q. Did you know the freight rates form San Francisco on cement?

A. No, sir.

Mr. Leisure: That is all.

4997 Washington, D. C.,
Tuesday, April 5, 1938.

4998 Mr. Paulson: Your Honor, the record shows that,—I refer to the record of Friday, April 1, it shows that Commission's exhibit marked for identification 1058-A and 1058-B were not offered or received in evidence. It was the intention of counsel that they should be offered, so that I will offer them at this time.

Mr. Leisure: Those were the bids, were they not, Mr. Paulson?

Mr. Paulson: Yes.

Mr. Leisure: We have no objection to 1058-A and 1058-B; that was submitted merely as a form and the typewritten material therein was not to be considered as marked in evidence,—just the form of invitation and bid.

Examiner Norwood: What about the other exhibit; what about C?

Mr. Paulson: 1058-C was offered and received, according to the record, and it is a part of 1058-A and B.

4999 Examiner Norwood: It will be received as marked.

(COM. EX. 1058-A and B was offered and received in evidence.)

Mr. Leisure: With the same understanding, we have no objection.

Examiner Norwood: Yes.

Mr. Paulson: Now, this exhibit, your Honor, as I have stated and offered and received, but there is no stamp of the reporter to show that it has been received, and I therefore request that the reporter be instructed to give it the proper stamp.

Mr. Leisure: No objection.

Examiner Norwood: Yes; which one is that?

Mr. Paulson: 1058-C.

F. C. PARSONS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

5000 I am sales manager for the Volunteer Portland Cement Company, Knoxville, Tennessee. The mill is located about 7 miles east of Knoxville. I have been connected with the company in that capacity since early after their organization in 1928, prior to their going into the production of cement.

Q. Has the Volunteer Portland Cement Company maintained membership in the Cement Institute during part or all of the time you have been sales manager?

A. We were members of the Cement Institute for a period of time, I do not remember the exact time, then we resigned, and were out for about two years and a half; then we rejoined.

Q. When did you rejoin?

A. I think it was in August or November, about 1933.

5001 Q. About the time the N. R. A. code came in?

A. I do not remember the exact date that the N. R. A. code came in.

Q. I was thinking you might associate your rejoining the Institute with the establishment of the code. Whether or not that is true, I will leave with you.

A. My recollection as to the definite date is hazy.

Q. At any rate, you were not members, as I understand it, for a period of about two and a half years prior to your rejoining sometime in 1933?

A. Yes, sir.

Q. And were you members at the time the Institute was formed in 1929?

A. No, sir; we joined, I think, sometime in 1929 or 1930.

Q. What is the sales territory in which the product of the Volunteer Company is marketed?

A. You mean how much territory do we attempt to cover?

Q. Yes.

A. We cover part of the States of Tennessee, Kentucky, Virginia, North Carolina, South Carolina and Georgia—about six.

Q. You say parts of those States?

A. Yes, sir; the entire state of South Carolina.

Q. Can you state what parts of the remaining States you cover?

5002 A. Well, we cover hardly 50 per cent of the State of Georgia; about 50 per cent of the State of Tennessee; the larger portion of the State of Virginia; a very limited area in Kentucky—

Q. And North Carolina?

A. I would say probably more than 50 per cent of the State of North Carolina.

Q. What is it that determines the extent of the territory into which you make your sales?

A. The possibility of business—available busines; that is, business that is possible for us to participate in.

Q. Well, there is business available, is there not, no matter how far you go?

A. Not always; no, sir. I mean in appreciable quantities.

Q. Does the amount of the freight that enters into the business, have something to do with whether you can extend your sales?

A. Yes; naturally we do not want to take business that would reflect an unprofitable return to us.

Q. And do you aim, then, to go just as far in the sales as the freight will permit you to show a return on the business?

A. We would probably want to go as far as we could get a satisfactory average net return to us.

Q. You say average net return. Do you sometimes
5003 go further into territory where you do not get any net return?

A. We attempt to meet the competitive market prices as we find them.

Q. My question is whether you sometimes go into territory that does not give you a net return.

A. I do not understand you when you say a net return.

Q. You spoke of an average net return.

A. Yes, sir.

Q. Which I take it to mean the average of all your sales?

A. Yes.

Q. Now, an average is made up of figures both above and below. Do you sometimes sell in territory where the return from that particular sale is less than a satisfactory net return?

A. Yes, we might do that, meeting competition.

Q. Sometimes you go into a territory and take a net return that is less than your cost?

A. Well, I am not in the cost department of our busines and I do not know just what our costs are, Mr. Wooden.

Q. You mean you conduct your sales department and policy without reference to knowledge of the cost?

A. No, sir.

Q. You do have some knowledge of the cost, then?

A. I misunderstood your question.

Q. The question was whether you sometimes get
5004 a net return in certain places that is less than your average cost?

A. We might sometimes take an order, meeting competition, and that particular order might reflect a net that might be less than our cost.

5005 Q. Do you have some minimum net return below which you will not go?

A. Well, we have one established figure beyond which we will not go.

Q. Below which?

A. We have no established figure below which we will not go.

By Examiner Norwood:

Q. Do you have an established percentage?

A. No, sir, but naturally we have some—we exercise our judgment as to just how far we should go.

5008 Q. Is the Volunteer mill a basing point mill or a non-basing point mill?

A. It is a non-price base mill.

Q. Has it always been a non-basing mill?

A. Yes, sir.

5009 Q. What does that mean?

A. It means that we attempt to meet competitive prices we find in the field rather than being price makers.

Q. In other words, you never lead in the changing of a price?

A. Beg your pardon?

Q. You never lead in the change of a price but merely follow the lead set by others?

A. We attempt to follow that lead; yes, sir.

Q. And does that mean following the lead of the basing point mills?

A. Well, we attempt to meet the prices that we find quoted by our competitors in our territory.

Q. What other non-basing point mills are there in your vicinity or that you come in competition with?

A. Well, the nearest non-basing mill to us is Signal Mountain.

Q. Where is that?

A. Chattanooga, Tennessee; the Cumberland Mill at Cowan, Tennessee, the Hermitage, at Nashville and I believe that the National Cement Company at Ragland, Alabama, is a non-basing point mill.

Q. What are the basing point mills that you consider in the making of your prices?

A. I do not know that we consider any particular

5010 non-basing point mill.

Q. I said "basing point mill."

A. That is my mistake. We do not consider any particular price base mill, but we attempt to meet the competition of the various mills we find in our territory.

Q. What are the basing point mills with which you compete?

Mr. Zimmerman: I think he has answered that.

Examiner Norwood: He may ask him again if he is not satisfied with the answer.

[Discussion off the record.]

Examiner Norwood: Read the question.

[The reporter read the question.]

The Witness: We have found quotations in our territory from time to time which we figured back—

By Mr. Wooden:

Q. I want the identity of the mills—where they are located.

A. I am going to give it to you. We have found, in our territory, from time to time, quotations made by our competition which quotations, when checked back, indicated that Richard City, Tennessee, about 130 or 140 miles south of us, Kingsport, Tennessee, about 100 miles northeast of us, Norfolk, Virginia, and Ironton, Ohio—

Q. How far are those two mills—Ironton and Norfolk—from your mill?

5011 A. From our mill?

Q. Yes.

A. As to Ironton, it would be a guess, Mr. Wooden. I would say 250 miles. Norfolk is more or less of a guess. I would say it is around 300 miles.

Q. All right; go ahead with any other basing point mills.

A. There is Leeds, Alabama.

Q. How far is that from your mill?

A. Approximately 300 miles.

Q. 300 miles?

A. 300 miles south of us. Then there is Clinchfield, Georgia, which would be approximately 300 miles southeast; Boyles, Alabama. I believe that is all I can recall.

5013 Q. Well, then, your price at a given destination is the price at that destination of the base mill, plus the freight from the base mill to that destination?

Mr. Zimmerman: If the Examiner please, this seems to me to be a persistent attempt on the part of counsel to argue this witness into something which the witness has never said and does not intend to say, as long as he knows what it is all about. This witness has not talked about basing point prices which they get at various destinations at all. The entire testimony up to the date has been on the part of counsel with reference to basing point mills and basing point prices. The witness has said all they do is to meet competition wherever they find it, and counsel keeps continuously trying to epitomize that into some statement of his own and I object to it.

Mr. Leisure: Now, the record, I think, should be clear. The witness said within the last five minutes, once 5014 that they are not price leaders; in the last instance he

said they are price leaders. I am not sure he intended to say that. I would like to have it read. That is a mistake and I think it should be corrected.

Mr. Wooden: I would like to have that straightened out too.

Examiner Norwood: Let him answer this question. I am going to overrule the objection. Read the last question.

(The reporter read the last question as follows: "Q. Well, then, your price at a given destination is the price at that destination of the base mill, plus the freight from the base mill to that destination?")

The Witness: Finding a quotation at that destination—

Mr. Wooden: (Interposing.). Can you not answer that question yes or no; it is a simple question.

Mr. Zimmerman: I think the witness ought to be permitted to answer a question the best he can, instead of being forced into simply agreeing with the testimony that is wrapped up in that leading question.

Mr. Wooden: If he wants to explain, all right; it is susceptible of a yes or no answer.

Mr. Zimmerman: I see no reason to scold the witness because the witness will not fall into the exact line of 5015 conclusions that the counsel seems to insist upon.

Examiner Norwood: Read the question.

(The question is again read.)

Examiner Norwood: Now, make any answer you wish to unless the Commission stops you.

The Witness: I will repeat that our price at a given destination is the price wherein we attempt to meet the quotation of our competition at that destination.

By Mr. Wooden:

Q. And is not that quotation at a given destination the equivalent of the basing mill price, plus the freight from the base to that destination?

Mr. Leisure: Now, your Honor, he is trying to get him to say how a basing mill fixes the price.

Examiner Norwood: He is asking whether or not that is a fact; he has the right to do that.

Mr. Leisure: Well, your Honor, it cannot be both ways; either he does as he says he does, mainly meets the competition of a basing point mill, whatever it may be, whatever freight may be, whatever the base price may be, or

he adds up the basing point net price, plus the freight. It cannot be both ways; either he does one or the other.

5016 Examiner Norwood: He is asking what he does.

Mr. Leisure: He has told us three times he meets the competition.

Mr. Wooden: I asked whether or not it was not the equivalent.

Examiner Norwood: Yes, he wants to find out how he meets the competition. Objection overruled. Let him answer; do you wish the question read again?

5017 The Witness: I assume that the price we find quoted there is the base price point plus the freight from the base price point to that destination; I assume that to be true.

By Mr. Wooden:

Q. You said a while ago that you filed a quotation and you figured it back to ascertain what the base was; then do you add back the freight from the base to the destination?

A. The freight from the basing point?

Q. Yes.

A. Yes.

Q. When you find a non-basing mill quotation at a given destination, you do not do that?

A. We figure that price back; we take the quotation by a non-basing mill, we figure that back to see where we could arrive, if such a price could be reached, and it is easy to determine on that basis from which base price point it was made.

Q. Well, how do you determine what is the base 5018 price point for the non-basing point mill?

A. We do not; we do not know; we cannot.

Q. Can you figure back to get the net of that mill?

A. No, sir.

Q. As a matter of fact, do you figure back to find out what the non-basing mill is quoting at the mill at all?

A. I do not know that I would.

Q. In other words, you are concerned only with what the basing point mill is quoting?

A. No, sir.

Q. Well, why do you not figure back to the non-basing point?

A. We are concerned with meeting the prices that we find in the field.

Q. You will not quote a price then unless you have heard what somebody else has quoted at that point?

A. I do not know; I would not base my price on meeting the competitive quotation on what I heard.

Q. Suppose there is no competitive quotation at a given point; will you quote at that point?

A. Well, I am familiar with price which have been quoted in and near that area.

5019 Q. But it has to be exactly at that point to get the exact delivered price?

A. I am familiar, if you will let me finish the answer—I am familiar with the prices which have been quoted in the past at a given point and I can take those prices and find, by a process of elimination—I can determine what I believe to be the prices at that particular point.

Q. Well, in such case, suppose it is a case where nobody had quoted at that particular point and you do not know the quotation except for three months ago. Will you quote without ascertaining what someone else has quoted at that point?

A. I will quote what I believe to be my competitive quotations for that point.

Q. How will you determine—

A. I have not finished the answer.

Examiner Norwood: Complete your answer to the previous question.

By Mr. Wooden:

Q. How would you determine what the competitive prices are at that point?

A. I just said that I am familiar with the points nearby or adjacent prices which have been quoted in the past at those points.

Q. And you take an adjacent point price and figure back to the base and add the freight from the base to this new point?

5021 The Witness: I said we are familiar with prices adjacent to the point in question. We have freight rates from various points and we determine, as we see the prices that have been quoted there. We note any difference in that immediate area and then we quote what we believe to be the prices—we quote a price that we believe would be our competitive quotation at that point.

By Mr. Wooden:

Q. How do you determine that? There has been no competitive quotation at that point. How do you get at a competitive quotation at that point? Being an adjacent point does not help it, does it?

5022 A. What do you mean by "determine that"? Determine what?

Q. Your competitive quotation at a point at which you do not have any quotation to go by.

5023 The Witness: Mr. Wooden, at a point—assuming, as I understand it, you want our quotation at a point where there has been no quotation made—

By Mr. Wooden:

Q. That is right.

A. We know quotations that have been made by competitive—

Q. At other points?

A. Yes, in the area.

Examiner Norwood: Do not interrupt.

The Witness (continuing): —in the area around the point in question. We take those quotations which we have found and can figure back from those points the freight rates from various points and determine the price base point that was utilized in making the quotations that we have found. We then can thereby determine that a certain price base point plus a freight rate from that point to the point in question, would give us what we believe to be the quotation at that point.

5024 By Mr. Wooden:

Q. In calculating the freight from the base to a given destination, do you use the freight rate books of the Cement Institute?

A. Yes, sir; together with the published tariffs.

5025 Q. What do you mean when you say "in conjunction with the published tariffs?"

A. Together with the published tariffs.

Examiner Norwood: Read me the last question and answer, please?

(The reporter read the question and answer referred to.)

By Mr. Wooden:

Q. Do you use one for one purpose and another for another purpose or use them both for the same purpose?

A. We check, in many instances—not in every instance—the freight rates from the cement rate book as compared with the published tariff books. Let me say that the Cement Institute rate books are utilized by us only for reasons of convenience and economy.

Q. Do you have them in the hands of your salesmen?

A. Yes, sir.

Q. Do they also have the published tariffs?

A. No, sir; they could not read one if they had it.

Q. Do you find differences between the published tariffs and the cement rate books at times?

A. We have in some instances; yes, sir.

Q. What do you do in such cases?

A. We utilized the published tariff rates.

Q. To figure your price?

5026 A. Yes, sir.

Q. Then you get a different destination price at the point figured according to a base mill, using the freight rate book of the Institute?

A. I do not know that that would necessarily follow.

Q. Well, if the freight rate book is different from the published tariff rate, how do you get the same price at your destination?

A. It might have been a different rate from my mill. I do not say we found the rate was erroneous from any particular point.

Q. But you do not figure your freight rates on your mill in making your price, do you?

A. No, sir.

Q. You figure from the base?

A. That is right.

Q. What difference does it make, then, whether the freight rate from your mill is different from the freight rate book of the Cement Institute as far as the price is concerned?

A. Well, we naturally want to know the rate from our mill to any given point.

Q. But you do not figure your price according to that?

A. According to what?

Q. According to the freight from your mill.

A. No, sir.

Q. You figure according to the freight from the

5027 basing point?

A. We meet competitive prices; yes, sir.

Q. I still do not understand, then, your statement about the difference between the freight rate book of the Institute and the published tariffs.

A. I do not understand your question there, Mr. Wooden.

Q. All right; let us try to get together. As I understand it, you do not use your published tariffs as far as figuring your price.

A. We might use them, Mr. Wooden, in checking rates with the—

Q. (Interposing.) You say you might, but do you, as a positive practice?

A. I cannot answer positively because that is handled by our traffic man.

Q. You use that in figuring the actual freight?

A. We use the rate from our mill to arrive at the—

Q. (Interposing.) You use the railroad tariff published rates in checking up freight you actually pay?

A. Well, I said I cannot answer that question definitely. I do not do that. We have a clerk in the office who does that.

Q. As far as figuring your actual rate is concerned, but for price-making purposes, you do not use the published tariffs?

5028 A. No, we use the cement freight rate book.

Q. So a possible difference in that freight rate book with the published tariffs does not enter into the price making?

A. It might if we found an error there.

Q. What would you do?

A. Use the published tariffs.

Q. Without notice to the Institute?

A. Yes, sir.

Q. Have you done that?

A. I do not know that we have.

5030 Q. You go ahead and quote the delivered price based on the published tariff, even though it is different from the freight rate book of the Institute?

Mr. Zimmerman: He had said he did.

Mr. Wooden: All right, I repeated it.

By Mr. Wooden:

Q. As a result, do you find that you make prices at given destinations that are different from those made by others?

A. I do not recall, Mr. Wooden, that we have ever used a freight rate from a tariff, that was from a price base point and found that it was different from the Institute's.

5032 Q. In a general way, do you succeed in having your prices at given destinations the same as prices of other mills at those destinations?

5033 A. We attempt to meet the competitive quotations as we find them, Mr. Wooden.

Q. By that do you mean that you try to make your prices at a given destination the same as other mills?

A. No, we do not attempt to make our prices the same.

Q. What do you mean by "meeting them", then?

A. Well, if I see a quotation of $2.50 at a given point, and we have reason to believe it is a market and not an individual quotation, why, we may usually try to get such a price. Now, the other man's price may be $2.50, as far as the price of somebody else is concerned, I do not know; that is my price there.

Q. Then, you mean you try to make your price the same at a given destination as the other fellow's price at that destination?

Examiner Norwood: Is that right?

The Witness: We meet the competitive quotations, Your Honor, as we find them in the field.

5034 By Mr. Wooden:

Q. All right, what do you mean by "meeting the price" of the other mill at a given destination?

5035 A. We cannot hope to get an order if our price is higher than our competitors'. We believe that we have got as good cement—we know we have as good cement as anybody—I believe it is better in some instances—

Examiner Norwood: (Interposing.) That does not answer the question. What do you mean by "meeting the price?" Do you mean making the same price, making it lower or making it just a little higher?

Mr. Wooden: As a matter of fact, my question is perfectly proper.

Examiner Norwood: Wait a minute.

The Witness: Am I to answer your question?

Examiner Norwood: Yes, sir.

The Witness: Will you ask it again, please?

Examiner Norwood: Read it.

(The statement of the Examiner is read.)

The Witness: My answer would be if it was higher I would not be meeting his price.

By Mr Wooden:

Q. If it were lower.

A. If it were lower, my price would be lower than my competitors' price.

Q. Would you be "meeting it" or "beating it?"

A. Well, I would be quoting a less price.

Q. You would not be meeting it; you used the
5035 term "meeting." I want to know what it means in your mind.

A. Well, I have tried to make it clear, sir.

Examiner Norwood: That means making it the same; that is what you understand as meeting the price, is it not?

The Witness: Well, it might be so interpreted by anybody.

5038 The Witness: I will repeat, as I have said before, we attempt to meet competitive prices we find in the field. Our price might be the same, but we try to meet his competitive price.

By Mr. Wooden:

Q. Do you try to make it the same?

A. We try to meet his price.

5039 Q. Cannot you answer it? Do you try to make it the same?

5040 A. I try to meet his prices, Mr. Wooden.

Q. Why do you not answer my question, do you not try to make the same?

A. If I go out and see a price, we will assume of two dollars—

Mr. Wooden: Your Honor, can not the witness answer that question; it is a simple question.

Examiner Norwood: Wait a minute, let him answer the question.

Mr. Wooden: It calls for a yes or no answer; then he can explain.

Examiner Norwood: I do not think so; let him answer. Go ahead.

The Witness: If I see a quotation of two dollars, if I want the business at that destination, then I will offer to meet that price. If I do not want the business at that destination I would not meet the price.

By Examiner Norwood:

Q. Well, to meet that price, you mean that you would make the same price, do you not?

A. In order to meet that price, I would quote two dollars.

Q. Yes. Do you try to do that in making all your bids?

A. Do you mean bidding in invitations to bid?

Q. Is that your policy to try to arrive at the same price?

A. No, sir, not in every instance.

5041 By Mr. Wooden:

Q. Do you recognize a distinction between cases, exceptional cases, where it is not done and what you aim to do?

A. For instance, we quoted the T. V. A. a price of our own.

Q. How did you know in that case whether you were meeting the price of others or not?

A. We did not know in that particular case.

Q. Even though you were in on the negotiating with T. V. A.?

A. I beg your pardon?

Q. Were you represented in the negotiations with T. V. A. by which that price was fixed?

A. No, sir, I was not in on the negotiations.

Q. Your company, however, was represented, was it not?

A. Yes, sir.

Q. Do you mean to say that you did not know in that case even what other mills were bidding?

Mr. Leisure: Your Honor, why do we continue arguing? He said what he meant to say.

Examiner Norwood: He asked him whether he knows or not.

The Witness: I repeat I had nothing to do personally, and have no definite knowledge of my own in regard to the T. V. A. quotation.

By Mr. Wooden:

Q. How is the price for commercial business at

5042 Knoxville determined?

A. We meet, in some instances, we have had a

price at Knoxville that was different from the quotations of our competitors in that town.

Q. You say in some instances?

A. Yes, sir.

Q. Was your price lower at Knoxville than your competitors'?

A. It was lower than quotations I have seen by competitors. However, our competitors came in and met it.

Q. When was that?

A. I think we had a lower price in July, 1931, and that price was maintained until May, I think of 1932.

Q. Did you ever have another mill make your mill a basing point?

A. No, sir.

Q. I take it that since that time that you refer to, that the delivered price in Knoxville is the same for all mills?

A. We kept that price, as I said, from July, 1931, I think it was, until May, 1932, and we found that all our competition came in and met those prices, and we then went back and met competitive quotations in the City of Knoxville.

Q. What do you mean by that; did you raise your price when you saw others—

A. (Interposing) We went back to the price prior to the time when we put in this special price.

5043 Q. What is the basing point from which prices into Knoxville are figured?

A. I do not recall today, Mr. Wooden, I do not try to remember those things.

Q. Is it Richard City.

A. I said I do not remember.

Q. Is it Kingsport?

A. I do not remember.

Q. Well, I am trying to refresh your recollection.

A. I do not remember; I could not tell you to save my life today.

5044 Q. You have notations and information in your office that enable you to know which mills are basing point mills, do you not?

A. We could determine that and make up such a list from quotations which we have in the file.

Q. You make up a list?

A. Yes, sir.

Q. And you have on it the basing point prices also?

A. We have on there some basing point prices which we think are governing in the territory in which we are soliciting business.

5045 Q. Whatever one applied to that particular destination.

A. I think I testified that, at a given destination, we find a quotation and we take that quotation and figure back and determine the destination price as being the lowest total of a given price base point plus freight to that destination.

Q. Showing you a paper marked 1064 for identification, being a photostatic copy of a memorandum of the Volunteer Portland Cement Company, addressed apparently to several salesmen dated February 28, 1936, will you identify that as an authentic copy of a document from the files of the Volunteer Company?

A. Yes, sir; this is a memorandum to our salesmen.

Mr. Wooden: All right; I offer it in evidence. (Handing paper to Mr. Leisure.)

Examiner Norwood: Is there any objection?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. 1064, Mr. Parsons, is signed "Denny."

A. Drummy.

Q. Who is Drummy?

A. Assistant sales manager.

5046 Q. Whose handwriting is the writing on the face of the exhibit?

A. This at the bottom is the handwriting of Hill Parsons, salesman.

Q. To whom is the memorandum addressed? Do you know anything about the memorandum?

A. I do not recall it. However, it came back to my desk after this salesman made the notation that is made on the bottom of it.

Q. What was the purpose of the memorandum? What was it used for? Do you know?

A. There was a change in our prices and these salesmen had told us that they had found these quotations and we wanted those quotations sent in to us and that is the reason for the memorandum.

Q. Was the memorandum actually used and sent to the salesmen?

A. Yes, sir.

Mr. Leisure: No objection.

(COM. EX. 1064 was offered and received in evidence.)

By Mr. Wooden:

Q. In this memorandum it was stated that you did not have a single competitor's quotation in the region
5047 of North Carolina and there was nothing to substantiate the prices you were issing that date. In such case, how did you arrive at the price?

A. Our salesmen told us they had found these quotations, and gave us the quotation prices at certain destinations and we then used our method of figuring back from the quotation given us by the salesmen, utilizing the freight rate to determine the price base point.

Q. Why did you ask then for the representative quotations when you already have them?

A. We did not have them; that is why I asked.

Q. In other words, it is a distinction just between having oral information and having written information, is that it?

A. We want these competitive quotations on file, in order that we would be certain that we had not been misled by the telephone information.

Q. Is it your practice to have your salesmen carry lists of base prices?

A. Yes, sir.

Q. To what extent do your own salesmen do their calculation of delivered prices, as distinguished from having them calculated for them?

A. They have base price points that govern a particular salesman's territory; they have freight rate books and they figure general prices at the destinations in question.

5048 Q. Freight rate books—are those the Institute books?

A. Yes, sir.

Q. Are your salesmen given discretion to depart from prices on occasion, or is their discretion strictly limited in that respect?

A. No, sir, they observe our instructions to them to utilize the price base points that are furnished them.

Q. And the prices furnished them as well?

A. Do you mean destination prices?

Q. Yes.

A. No, sir; I think there is only one instance that we have ever gotten out any destination prices,—I mean a list of destination prices.

Q. Are they instructed to observe the base prices that you furnish them?

A. Yes, sir.

Q. And to calculate the delivered price by adding the freight rate from the base point to the destination?

A. From the price base point that would govern that territory.

Q. And they use the freight rate books that they
5049 carry for that purpose?

A. Yes, sir.

Q. How is it determined which base price will govern any particular territory?

A. By using various base points and freight rates from those points, and the lowest combination of the two, that is the price we attempt to meet and quote.

5050 Q. I am showing you papers marked 1065-A to D
5051 inclusive for identification. Will you identify them as authentic copies of communications from the files of Volunteer Company?

A. I do.

5052 Q. Are those typical of the sort of instructions given to salesmen on the subject of base prices?

A. I will say that I do not know that we have a typical instruction. From time to time our instructions vary, depending upon conditions.

Mr. Wooden: I offer these in evidence (handing papers to Mr. Leisure).

Mr Leisure: Mr. Wooden, two of these exhibits are the same exhibits. You do not want to offer both, do you?

(Discussion off the record.)

Examiner Norwood: Then, that lettering should be changed from A to D, to A to C.

Mr. Wooden: Yes, because it is B that is out; so that C becomes B and D becomes C.

Mr. Leisure: May I ask the witness a question about these exhibits?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. These Exhibits 1065-A, B and C: A and B are instructions that went out to salesmen?, Is that correct?

A. Yes, sir.

Q. And now I notice C does not have anything attached to it. Did it go out to the salesmen?

A. To this particular salesman—R. L. Mooney—yes.

5053 Mr. Leisure: No objection.

(COM. EX. 1065-A, B, and C was offered and received in evidence.)

By Mr. Wooden:

Q. Was it along in March, 1932, that you restored your prices that had been lower than other mills, to a point higher than that?

A. Mr. Wooden, I can not remember.

Q. It was about that time, was it?

A. You mean in March, 1932, that we advanced our price?

Q. Yes.

A. I could not tell you that far back.

Q. You testified a while ago about having prices in effect that were lower than competitors during that period and they met it?

A. That was in the City of Knoxville.

Q. Confined to Knoxville?

A. Yes, sir.

Q. Elsewhere the condition did not exist?

A. No, sir.

Q. Why was it confined to Knoxville and not elsewhere?

A. We had lost a considerable amount of our business to competition in our Knoxville arket and this was suggested as a means of remedying the condition.

5054 Q. You consider you are entitled to a large part of the business in Knoxville?

A. Not necessarily, but we are in a position to serve them there.

Q. Is that your most profitable market?

A. Yes, sir.

Q. By comparing your mill net with your cost?

A. Of course we get a higher net in Knoxville because we have less freight rate.

Q. Is the Knoxville price the sum of the base mill price plus freight to Knoxville?

A. I am not certain that it is today. There was a surcharge put on sometime ago, but I do not believe we added

that surcharge to our price in Knoxville, our mill being located within the switching limits of the city.

Q. Prior to the time of the surcharge, was the price in Knoxville arrived at, or was it the equivalent of the base price plus freight to Knoxville?

A. Mr. Wooden, I think it was; I am not positive about that; it is hard for me to remember definite figures that way.

Q. What is the freight from the basing point to Knoxville?

A. I do not remember today.

Q. Can you approximate it?

A. I do not remember what price base point plus the freight makes the price in Knoxville.

5055 Q. You do not know the price in Knoxville today?

A. I am afraid I could not tell you positively.

Q. Do you know what your price in Knoxville is today?

A. That is what I had reference to when you asked me the price.

Q. Do you know the price that you have in effect at any point?

A. No, sir, today, I do not.

Q. Do you know what it was yesterday?

A. No, sir, I can not carry those figures in my head,—I do not attempt to.

Q. Even though Knoxville is your most profitable market?

A. Yes, sir.

Q. Do you know what the approximate freight from the basing point to Knoxville is?

Mr. Zimmerman: He has already answered that.

Mr. Wooden: All right.

Mr. Zimmerman: He certainly has answered that.

Examiner Norwood: Let him answer.

The Witness: If I could recall the price base point from which that price is arrived at, I could give you the approximate—

By Mr. Wooden:

Q. (Interposing.) You do not know what the base point is?

A. I do not recall today, no, sir.

5056 Q. When was the last change in the price in Knoxville?

A. I can not tell you, sir.

Q. Do you know when the last change in any basing point price occurred that affects your territory?

A. I can not recall.

Q. I am showing you a paper marked 1066 for identification, purporting to be a list of base prices and basing points, dated October 28, 1936. Will you identify that as a paper that was furnished to an agent of the Commission along in 1936,—the latter part of 1936?

A. There is no method for me to identify it, further than I notice it says "Exhibit 5, Interview with Fred-
5057 erick C. Parsons, File 1-10052, dated 11-16-36, Donald MacDonald, Attorney, Federal Trade Commission."

Q. Do you remember the time Mr. MacDonald was with you?

A. I remember his having been with us.

Q. Do you furnish him a list of base prices?

A. I gave him this and such other material as he asked for. I gave him a list of prices. I assume this is it—that is Mr. MacDonald's signature.

Q. If you want to look over the list itself and raise any question about the authenticity of these base points and base prices on there, why do so now?

A. I do not know that I have any questions to raise.

Mr. Wooden: All right, I will offer it.

(Mr. Wooden handed the paper to Mr. Leisure.)

By Mr. Wooden:

Q. Mr. Parsons, do you know in whose handwriting at the top are the words "Base prices"?

A. No, sir. You understand, Mr. Wooden, I trust you did, that I identified this as being a copy; I did not identify this as having been an original from my file, as I understand; it may have been.

Q. I do not know about that; all I know is it was furnished to Mr. MacDonald.

A. Yes, sir, I do not know anything about the handwriting.

Examiner Norwood: Any objection?

5058 Mr. Leisure: There is writing there which I understand is under our usual understanding?

Mr. Wooden: Yes.

Mr. Zimmerman: Who put the blue pencil notation on there? The witness?

Mr. Wooden: No.

(COM. EX. 1066 was offered and received in evidence.)

Q. Looking at this Exhibit 1066, will you state which of those base prices, if any, are still in effect?

A. I would like to say that any statement I make should be subject to check because this is all being done from memory—

Q. Yes.

A. And I am not checking them as to the figures.

Q. Make it clear, just what you are saying then.

A. I think Leeds, Boyles, North Birmingham, Clinchfield, Richards City, Kosmos, Cape Girardeau, Norfolk, Ironton, Kingsport, New Orleans, Mitchell, Charleston, Savannah, Jacksonville—I am not so certain about Miami, now.

Q. In other words, all on the list, with the possible exception of Miami are still basing points?

A. I think that is correct. As I said, the whole 5059 story is from memory.

Q. Are you unable to say that any of those prices listed from those basing points are still in effect?

Mr. Leisure: Is the memorandum dated?

Mr. Wooden: Yes.

The Witness: It has been two years ago since this has been dated, and I would hesitate to make a positive statement about the figures as to whether they are in effect today. I could give an opinion, but I am not positive.

By Mr. Wooden:

Q. Not as to a single one do you know whether any of those base prices are in effect?

A. I would not want to be absolutely positive of that.

Q. You said that you might venture an opinion. Give us your opinion for what it might be worth.

A. I would rather not give a definite opinion, because I do not handle that particular detail in our office when those things are changed, when they are.

Q. Who, in your office, does know what base price was in effect today, if you do not?

A. Well, we have a list of them and I can refer to them the same as this one which came from our office.

Q. Will you furnish such a list?

A. Will I furnish such a list?

5060 Q. Yes.

A. Yes, sir.

Q. You do not have such a list with you?
A. No, sir.
Q. Can you state whether or not, in general, there have been a number of changes in the base prices since October, 1936?
A. I think there has been some, but very few. That is my recollection.
Q. And at what points?
A. I do not remember, Mr. Wooden. I do not try to carry that kind of information in my mind.
Q. As of the time of this list, October 28, 1936, which of those base prices made the delivered price in Knoxville?
A. I did not catch that.
(The reporter read the question.)
5061 The Witness: I do not remember today; that is two years ago, almost.

By Mr. Wooden:

Q. Is the price in Knoxville today made on a different base than it was two years ago?
A. Do you mean our competitive price or the price that we quote today?
Q. I am talking about delivered price in Knoxville.
A. I cannot tell you offhand what base point price governs the quoted price in Knoxville today.
5069 Q. Did you participate with the executives of the company in considering or discussing that question whether you would operate as a non-basing point mill or not?
A. I did not, sir.
Q. Did they give you any information as to why they decided it should be a non-basing point mill?
A. They did not, sir.
Q. You have no knowledge of why?
A. No, sir.
Q. Is that right?
A. I have no knowledge as to why they wanted to do so, no, sir.
5070 Q. Based on your experience as a sales manager for a non-basing point mill, do you see any advantages in operating as a non-basing point mill?
The Witness: With a basing point mill you can get
5071 no more for your cement than your price base; on a non-basing point mill, where you meet competitive prices, you might have an opportunity to make some more

money than on a basing point mill, and naturaly everyone likes to make all the money they can.

By Mr. Wooden:

Q. And is that by adding the freight from the basing point mill to destination?

The Witness: What do you mean "is that?"

Examiner Norwood: Is that the reason,—you get more money for it?

Mr. Wooden: Explain your answer; I want your answer explained when you say there is a chance to make more more money.

The Witness: I did not say there was; I said naturally everyone wanted to make all the money they could make.

By Mr. Wooden:

Q. Yes, that was your answer with regard to the
5072 advantage of the non-basing point mill getting more than the base price.

A. Yes.

5075 The witness identified Com. Exs. 971 10B and 971 14P as letters that passed between him and Professor Arthur R. Burns. He said, "that one (Exhibit 971 10-B) is." "The other" is a reply, he believes. He recognizes that.

Mr. Wooden: Your Honor, these were papers which were produced under the subpoena duces tecum and I offer them now.

5077 (COM. EX. 971-10B, 971-14P and 971-14Q" was offered and received in evidence.)

Q. Now, it appears from your letter, which is 971-14-P, that the freight rate from the basing point at Mitchell, Indiana, to your station was 70 cents plus, I believe, in June, 1933. You were then adding 70 cents to the basing point price to get the price that you would charge at the location of your mill?

5079 The Witness: I do not remember back five years ago, whether the price that we were meeting at that time in Knoxville was based on Mitchell, Indiana, from that mill or not, I cannot recall.

By Mr. Wooden:

Q. Does not the letter refresh your recollection on that?

A. I take it from this letter, Mr. Wooden, that we were attempting to meet a price quoted in Knoxville at that time.

Q. By adding the freight from the basing point?
A. It was quoted in Knoxville.
Q. What do you talk about Mitchell being the basing point for in that letter?
Examiner Norwood: What exhibit is that the witness is referring to?
The Witness: 971-14P's.
Examiner Norwood: Read the question.
(The question is read.)
The Witness: I must have been answering a question that was asked in his letter.
Mr. Wooden: Yes, that is this other exhibit, 971-10B's.
The Witness: It must have been in the year 1932 there were some points in our territory where we found
5080 prices that indicated Mitchell was used as the price basing point.

By Mr. Wooden:

Q. Was it not in January, 1933, that Mitchell was the basing point and June, 1932, that Speed, Indiana, was the basing point?
A. I cannot recall that far back, Mr. Wooden.
Q. Do you want to look at the questionnaire which you submitted to Clark and Burns to help you?
A. I would have to look at this.
Q. (Mr. Wooden hands document to the witness.)
A. I would rather these figures speak for themselves; I cannot say positively, but I would imagine that probably we used the price base point from Mitchell and Speed that the freight rates from those two points might have made the same figure at Knoxville. That has been five years ago. I cannot remember it and I would rather those figures spoke for themselves.
Q. When you said a while ago that one of the advantages of a non-basing point mill was to be able to make some extra money by adding freight, was that the sort of thing you had in mind?
Mr. Leisure: That is what Mr. Wooden said, not what the witness said. I think we had quite a long argument on that question.
5081 The Witness: I would not say that we were attempting to make extra money, but we were attempting to meet competitive prices as quoted at that time.

By Mr. Wooden:

Q. What did you mean by one of the advantages of a non-basing point mill in that particular?

A. I simply meant that there was a possibility that you could realize probably more money from a non-basing mill.

Q. From a non-base mill?

A. From a non-base mill.

Examiner Norwood: How?

The Witness: If you have a base mill you can get no more money for your cement than your price base.

Mr. Wooden: Just elaborate on that.

5082 The Witness: Now, we go out and attempt to meet prices as are quoted, as we find quoted by our competition.

By Mr. Wooden:

Q. And if the freight from the base mill to Knoxville, for instance, is 70 cents, you just add that 70 cents to the base price, you have an extra 70 cents that you would not have if you went and sold back in the territory of the base mill?

The Witness: If we meet a price on a base mill, which base mill carries a freight rate of 70 cents to a given destination, we have had to add that freight rate to meet that price.

By Mr. Wooden:

Q. Although your actual freight may be little or nothing to that point?

A. Well, it would be less if it was nearer our mill than it was to the price basing point.

5083 Q. And if it was sold right at your mill you would not have any freight?

A. A nominal freight.

Examiner Norwood: What do you mean by nominal freight?

The Witness: Well, your Honor, from our mill, for example, downtown, there is a switching charge.

5084 Examiner Norwood: You mean to say that you fix your price in Knoxville, at your mill base price plus the switching charge?

The Witness: No, we have no mill base price.

Examiner Norwood: But you base your quotation, then, on the price that a Knoxville man could get the cement for from your lowest competitor?

The Witness: Yes, sir.

By Mr. Wooden:

Q. In the case of the 70 cents addition, why could not you make that 65 cents instead of the actual 70 and be lower than the basing mill into your home territory?

A. I could if I wanted to.

Q. You did do that once, back in 1931?

A. We put in a special price at Knoxville in 1931; yes, sir.

Mr. Zimmerman: And he told you what happened, too.

Mr. Wooden: I would like to have him tell us again.

Mr. Zimmerman: Ask him, and he will tell you.

By Mr. Wooden:

Q. In other words, do you mean to say you do not want to lessen or dispense with any of that advantage, for fear of reprisals?

5085 The Witness: No, sir. We can sell our cement at any price we please, but if we make a low price today, it will probably be the high price next week.

By Mr. Wooden:

Q. If you could give up any of that freight advantage there, you say the price would be met just as it was in 1931?

A. I think it would be the same as in our previous experience where we gained no increase in volume.

Q. Not even temporarily?

A. No, sir; our competition still met our price.

5086 Q. You still had a large advantage, even though your prices were met in the local market?

A. What is a large advantage?

Q. A large advantage in freight.

A. Naturally the freight is less from our mill to downtown Knoxville than it is from a mill some distance away.

Q. Did you have an advantage as much as 70 cents a barrel in Knoxville against the basing point mill?

A. At what time?

Q. In 1932 and 1933.

A. At the time we had the special price?

Q. No, I am speaking of the time covered by your correspondence and referring to your questionnaire answers as to your prices in 1932 and 1933.

A. I do not remember just what our price was in Knoxville at the time you speak of, but I would have to know that before I could answer you.

Q. Your correspondence shows that it was a 70-cent freight from the controlling base to your destination.

A. Well, may I use this to illustrate? I do not get your question exactly.

Q. I am asking you if you did not have a 70-cent freight advantage from the basing mill at that time?

A. If the freight rate from the basing point mill to Knoxville as 70 cents, then, there was some difference, of course, in the freight from our mill downtown—a considerable difference.

5087

Q. How much difference is there?

A. Our mill downtown ranges from $7.20 to $9.90 per car.

Q. How much a barrel?

A. Well, I would have to strike an average there.

Q. What is the average?

A. Five or six cents a barrel. That is approximate.

Q. How much did you lower the price in 1931 that was met?

A. If I remember correctly our quoted price at that time was $1.90. I am not so sure of that. That was in cloth bags f. o. b. Knoxville.

Q. That was the lowered price?

A. Yes, sir.

Q. How much did you lower it from what it had been?

A. Mr. Wooden, I do not remember definitely.

Q. Was it just one lowering or a series that culminated in that?

A. No, just one lowering.

Q. Was that done because some other mill was cutting the price in Knoxville?

A. That was done at our own volition.

Q. You took the leadership at that time?

A. Yes, sir; in an attempt to protect the market.

Q. Was anyone else lowering the Knoxville price, figuring on a base plus freight?

5088

A. Not that I know anything about. I do not know what they may have figured.

Q. You took that lead then without any competitive necessity, as far as the price is concerned?

A. Absolutely; it was done at our own will and volition.

Q. What do you mean by an attempt to protect your market there?

A. I think I testified this morning that about that time

we had lost a great deal of business in Knoxville and we wondered if we reduced our price it would reflect to us an advantage in volume. It did not reflect any advantage in volume and therefore we discontinued our price at that time.

Q. Do you know why you were losing business to other mills at Knoxville if not on a price basis?

A. Do I know why we were losing business to other mills at Knoxville if not on a price basis?

Q. Yes.

A. The only answer I can give you is that they were better salesmen than we were.

Q. It takes pretty good salesmanship to sell goods against the other fellow at the same price?

A. It is easier to sell it that way than to attempt to sell it when he can buy it at a lower price.

Q. By the same token, it is easier to sell at a lower
5089 price than at the same price?

A. That might be, but it did not react to us when we had in the special price at Knoxville.

Q. Why is it that you do not sell on an f. o. b. mill basis unless the purchaser takes the cement where he pleases?

A. We have no f. o. b. mill price and in order to attempt to meet competitive prices, our prices are predicated on carload lots.

Q. Still, why will you not sell in carload lots at some price that is based f. o. b. your mill?

A. We never had a mill price—never made a price based at our mill.

Q. Can you say why?

A. I have never been instructed to do so by my executives.

5090 Q. Has your mill been accustomed to bidding for
5091 the highway requirements of the State of Virginia?

A. Yes, sir.

Q. Have you been accustomed to bidding for delivery at all or most all of the destinations specified in the invitations?

A. Mr. Wooden, I think our bid to the Virginia Highway Department, we bid in a list of towns, how many, I do not remember.

Q. Well, I am showing you a tabulation of all the bids made to the State of Virginia in June, 1936; the Volunteer Company appears among them—this is Commission's Ex-

hibit 9-A, B, and C. Now, on 9-A you will note from the tabulation which is in evidence, that the Volunteer Company bids the same delivered price at all destinations as the other bidders except in two instances on that page, where the Volunteer bid was higher than those of the other mills. Was it intended that the Volunteer bid at those particular destinations should be higher than the others?

A. That was our bid and what we saw was our price at that time that we intended to bid; we intended to bid that figure; we bid individually.

Q. You did bid that figure?

A. Yes, sir, I assume we did.

Q. And it was higher than the other mills at that point. What I want to know is why your price at the other
5092 points was the same as all other mills and at those two points it was higher than the other mills?

A. That was what we saw was our price at that time, as far as our price being the same as the other man's, I know nothing about that.

Q. Do not errors sometimes creep into these calculations?

A. I think it is humanly possible for a human being, errors can creep in anywhere.

Q. You said this morning you always intended to quote the competitive price.

A. I think I said I attempted to meet it.

Q. Yes. Then, can you see any reason why in those two cases you quoted a higher price?

5093 The Witness: That was our quotation as we saw it, as being our correct price for delivery at that destination.

By Mr. Wooden:

Q. Did you not figure,—how do you figure your quotations on bids to States like Virginia and North Carolina at all these destinations?

A. I thought I explained that this morning.

Q. Do you want your same explanation to apply, I am taking up Mr. Leisure's point now; do you do it the same way on bids that you do for commercial business?

A. In the same manner, yes, sir.

Q. Did you happen to know whether or not some of the Virginia prices were figured on a base from Northhampton or Union Bridge?

A. I did not figure those prices; to my personal knowledge, I cannot answer.

Q. Who does figure them in your organization?

5094 A. The price clerk.

Q. Who is he?

A. Mr. Roberts.

Q. Is he your traffic manager also?

A. Yes, sir, we are a small organization. He is traffic manager, order clerk and rate clerk.

Q. Do you remember at anytime putting up instructions to your men about the need for care and not to make any mistakes in calculating prices?

A. I do not remember it; I probably did.

Q. When you say you make up your destination prices for bids like these bids to the State of Virginia, the same way that you figure commercial price at destination, you mean I take it, that you, at each one of these points where delivery is asked for, you ascertain what the destination price is and figure it back to the base.

A. We probably have destination prices at most of those points.

Q. Do you quote the same to the State on bids that you are quoting on the open market?

A. Yes, sir.

Q. On commercial business?

A. Yes, sir.

Q. You cannot say whether you wanted to make your price, and intended to make your price higher at

5095 those two points in Virginia in 1936 than the other mills, whereas in all the other cases you made them the same?

A. I do not know what the other mills were bidding; our bid is submitted on the basis of what we thought was our price for the destinations named.

Q. Showing you a paper marked 1067 for identification, it appears to be a notice from you to salesmen dated March 14, 1931, regarding the need of care in calculating prices.

A. I recognize it as an office memorandum or an inter-office memorandum.

Mr. Wooden: I will offer it in evidence.

Mr. Leisure: May I ask a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Witness, did you write this memorandum, or do you know who wrote it?

A. May I see it? (After examining paper.) I dictated it.

Mr. Leisure: No objection.

(COM. EX. 1067 was offered and received in evidence.)

By Mr. Wooden:

Q. Has your method of calculating destination prices, did that remain the same during the N. R. A. Code
5096 period as it was subsequent thereto?

A. During the N. R. A. Code period we filed our prices with the Code Authority.

Q. Yes, but I mean did you calculate basing points and use the freight rate books of the Institute in calculating the delivery price?

A. I think we did.

5097 Q. I am showing you Exhibit 978-F, being a letter from you to the Chairman of the Code Authority, June 4, 1934, in which you filed your price at a certain destination and then asked the Code Authority to tell you whether that price was correct or not. How could you expect the Code Authority to tell whether your own price was correct that you were filing?

A. Probably what we were intending to ask was whether that was the lowest filed price.

Q. But you did not ask that; you merely asked if that was the correct price.

A. That was an incorrect use of words, as I see it.

Q. But you filed your price with it?

A. It shows that. I did not write that letter. My name is signed to it, but I did not sign it. It came out of my office.

Q. Did you not expect them to ascertain and to inform you whether it was the correct price or not and whether it was figured from the proper basing point and the proper rate from the basing point to destination?

A. No, sir; what we wanted to know was whether there was a lower price filed than our price.

5098 (COM. EX. 1068 was offered and received in evidence.)

Q. It appears from this Exhibit 1068, Mr. Parsons, that

the emergency freight charge had not been added in the North Carolina rate book.

A. Yes, sir.

Q. Those emergency charges had been put on by the railroads and taken off from time to time over a period of years, have they not?

A. Yes, sir.

5101 Q. Will you identify papers I hand you marked 1069-A and B as copies of documents from your files furnished to the agent of the Commission?

A. One appears to be an unsigned memorandum, which has my initials, which I dictated, addressed to Mr. Roberts; the other, my only method of identification of

5102 this is that this is my writing. There is no signature.

Q. And that writing reads what: "Filed quotation"?

A. "Filed quotation."

Mr. Wooden: I will offer these papers.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1069-A and B was offered and received in evidence.)

Q. Can you state, Mr. Parsons, referring to 1069-B, what the approximate time to which that paper relates, was?

A. No, sir, I can not, Mr. Wooden.

Q. From the circumstances named in it—the prices—you can not tell about what time it was?

A. No, sir.

Q. Can you say what the outcome was of the discrepancy between the rates that are described in the memorandum?

A. No, sir; I can not.

Q. I show you now papers marked 1070-A to C, inclusive, for identification. Will you identify them as copies of papers from the files of the Volunteer Company as furnished to Mr. MacDonald, an agent of the Commission?

A. I think they are copies.

5103 Q. Was there some uncertainty as to whether or not the emergency charge in North Carolina should be applied on bids submitted to the State in February, 1936?

A. There was at one time—and I think that is the date—that Mr. Betts, purchasing agent for the North Carolina

Highway Commission and Public Works (I believe that is the title) called me on the telephone about the time that he asked for some bids, and said that he understood that there was a probability that the emergency charge would not be added to the prices to North Carolina and asked me what I knew about it, as I recall.

Q. What did you know about it?

A. I told him at that time that I did not know anything about it. A few days after that, I think, we found some quotations—right about that time, which was about two years ago—we found some quotations indicating that a price was quoted that did not include the sur-charge.

Q. A price on commercial business?

A. Yes, sir.

Mr. Wooden: I offer these Exhibits 1070-A to C in evidence (handing papers to Mr. Leisure).

5104 Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

Examiner Norwood: It will be received as marked.

(COM. EX. 1070-A to C was offered and received in evidence.)

Q. Do you know how your bids were made up on 5105 that occasion to the State of North Carolina?

A. I could not tell you today, no sir, except that we used the usual procedure.

Q. As you have outlined here today?

A. We used the usual procedure in making our commercial prices.

Q. Do you make the same delivered price, no matter what the quantity involved is, where it is over a carload, on this large business for the State of North Carolina, for instance, they get the same price per carload?

A. We quote the State of North Carolina the same price that we quote on carload shipments.

Q. In selling direct to the State of North Carolina, do you sell them at the same price that you sell to the dealer?

A. That we sell to the dealer?

Q. Yes.

A. Yes.

5109 Q. Have you not found from experience that the destination prices of your competitors and yourself are identical in most cases?

A. They are pretty generally uniform.

Q. What is it that causes them not to be uniform in some cases?

A. I could not answer that, sir.

Q. What is it that causes your prices in some cases to be lower or higher than others?

A. Well, in some instances we might quote and we have quoted a lower price.

Q. Are you referring back to your 1931 and 1932 example?

A. I was referring to that and also the T. V. A.

Q. Anything else?

A. That is all I can recall right at this moment.

Q. I am showing you papers marked for identification 1071-A and B, purporting to be an exchange of communications between you, a telegram from Mr. Drummy to you and a letter of yours to Mr. Hanahan. Will you iden-
5110 tify them as such, as coming from the files of your company, and furnished to Mr. MacDonald, an agent of the Commission?

A. I do.

Mr. Wooden: I offer them for the record.

Examiner Norwood: Is there any objection?

(No response.)

Examiner Norwood: They will be received as marked.

(COM. EX. 1071-A and B was offered and received in evidence.)

Q. Is this your writing on 1071-B that says, "File Volunteer price?"

A. Yes, sir.

Q. And also on 1071-A?

A. Yes, sir.

Q. This was your letter to Mr. Hanahan, 1071-B from Richmond?

A. Yes, sir.

Q. You say in this letter to Mr. Hanahan, Exhibit 1071-B, referring to the North Carolina bid, "I will have to learn just what others may do in regard to their bids beforehand." What steps did you take to find out what others might do?

A. Well, as I testified a while ago, Mr. Betts had telephoned me and asked me what about the surcharge. I
5111 left Knoxville after that telephone call and went on to Virginia. Mr. Betts called me again, I think it was at Charlottesville, Virginia, and asked me again what to do,

and I told him I did not know just what we would do. In the meantime I had learned that we had a competitive quotation showing that the surcharge had been removed.

5112 Q. Mr. Drummy told you that in the telegram of February 20, did he not?

A. Yes, sir.

Q. And, on the 21st, in your letter to him, 1071-B, you referred to having picked up a quotation—a copy of that competitive quotation—

A. Yes, sir.

Q. Eliminating the surcharge and saying that there was nothing to do but meet that reduction?

A. Yes, sir.

Q. And yet you state you would have to learn what the others did in regard to that—

A. That is right. That was following my conversation with Mr. Betts and I wanted to talk to Mr. Betts before reaching Mr. Hanaham.

Q. I asked you what steps others would take would have to do in regard to your bid?

A. I talked to Mr. Betts of the Highway Department

Q. How did he know what the others would do?

A. I do not know.

Q. You did not get any light on your inquiry as to what the others would do from Mr. Betts?

A. He said that it was his understanding that the surcharge would not be included in the bids to the Highway Department.

Q. Were you content to depend on his opinion?

5113 A. Yes, I had a substantiation of it by this quotation.

Q. Yes. What more did you want after finding out that the surcharge would be eliminated when you said you would have to learn what the others would do about their bids?

A. In my conversation with Mr. Betts at Charlottesville. I told him that—

Q. He could not tell you what the others would do in regard to their bids, could he?

A. I do not know as he could. I have just testified that he said that he understood that the surcharge would not be added to the North Carolina prices.

Q. And when the bids went in you reported to your salesmen that they were all the same except Superior, which did not eliminate the surcharge?

A. My salesmen reported that.

Q. You said they did not underbid you.

A. That was an office memorandum.

Q. Will you identify the papers marked 1072-A, B and C, which I hand you, as photographic copies of documents from the files of the Volunteer Company furnished to Mr. MacDonald, an agent for the Commission?

A. 1072-A is a memorandum to the salesmen. It was dictated by myself.

1072-B is a memorandum to Mr. Wallace, one of our salesmen.

5114 1072-C is a memorandum from Mr. Perkins, one of our salesmen.

Mr. Wooden: I offer these in evidence (handing papers to Mr. Leisure).

Mr. Zimmerman: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Zimmerman:

Q. Did you notice in the upper left hand corner of these several exhibits, 1072-A, B, and C, a typewritten notation; were those made before they were delivered to the investigator, if you know?

A. I think they were; I think they were on the originals, if I understand your question.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: No objection.

(COM. EX. 1072-A, B, and C was offered and received in evidence.)

By Mr. Wooden:

Q. Referring to 1072-A, which refers to a list of the base prices effective in the territory of the salesmen today; is that the same list that is embodied in Exhibit 1066?

A. May I see this paper?

Q. Yes, sir.

5115 A. I should say that they are.

5117 Washington, D. C.,
Wednesday, April 6, 1938.

5118 F. C. PARSONS thereupon resumed the witness stand as a witness for the Commission and testified further as follows:

Direct Examination by Mr. Wooden (Resumed).

5119 The Witness: As I have testified, we attempt to meet our competitors' prices as we find them at the various destinations, and when a salesman reports 5120 to us a change in price, we attempt to get that quotation and then use that as a basis for figuring back to determine the destination price,—the price base point on which that destination price is made.

By Mr. Wooden:

Q. I understand that.

A. We do not take just simply one quotation that we pick up, but we try to determine if that is a market price rather than a price at a particular destination.

Q. How many quotations do you consider sufficient to enable you to determine that there has been a change in the base price?

A. We have no particular practice or definite practice.

Q. Do you have exactly the same basis of calculation whether you accept the quotation reported to you by your salesmen, as though you figured back and calculated the freight back in either case?

A. We might find a quotation at a destination point, but we want to establish definitely from what point that quotation was made. Therefore, it is necessary for us to figure various price base points to determine.

Q. How do you determine it if there are several base points involved?

A. We take the lowest total of the base price point plus the lowest freight rate to that point.

5121 Q. Yes, but you are trying to find out what the base price is, as you say, and you will take several. I say, when you find a quotation in the field to a certain destination, that might involve several base prices and

you do not know which one it is, how do you determine which one it is by taking out the freight?

A. We take the destination price that we find quoted. We deduct from that price the freight rates from one mill and another mill and another mill and by a process of eliminating calculation, we can determine which is the lowest combination.

Q. But they all work back to the price that you got in the field, as reported?

A. Not necessarily.

Q. That is what you start with and come back to?

A. We might find a quotation from which we would deduct the freight rate—

Q. But as you said, it is the combination of the lowest base price plus the freight?

A. Yes, sir.

Q. Referring to Exhibit 1066, the list of base prices of October 28, 1936, I note that the Ironton base is a sort of dual base; that is, $1.90 as to Kentucky and Tennessee and $2 in North Carolina and South Carolina. How were you able, without checking all along the border of Kentucky and Tennessee to determine whether the price was 5122 $1.90 as applying to Kentucky and Tennessee?

A. We get that from quotations in Tennessee and Kentucky.

Q. Do you mean to say you had salesmen run along the border towns in each State to find out what the quotations in the border towns were before you could find out that the Ironton base was—

A. That is done in the usual course of the salesmen's work. Those things are pretty generally known and we get that from the customers and dealers—the changes in prices.

Q. No matter whether it is an advance or a decrease?

A. No difference.

Q. You mean to say, then, that you did have information on October 28, 1926, showing what the prices were, delivered in the border towns of Kentucky and delivered in the border towns of Tennessee?

A. I think we did, or we would not have established this information in both instances.

Q. It has differed in each place?

A. If the price in Kentucky we found reflected that it was based on Ironton and it is $1.90 and we found that

the prices in Tennessee were based on $2 from Ironton, then that would be a fact.

Q. Would you take any town in Tennessee or Kentucky as a basis for that conclusion or would you want the border towns?

A. Well, if towns are located in Kentucky, as we
5123 found them and it showed it was based on a price base of $1.90, Ironton, and for Tennessee it was based on a price base of $2, that would show that. One town, as an example, is Bristol, Tennessee-Virginia.

Q. That is on the borderline, is it not?

A. It is in both States. The State line of Virginia and Tennessee runs through the middle of the town.

5124 Q. In Exhibit 1065-C, dated September 6, 1932, you instructed your salesmen as to the price in Bristol, and referred to the Ironton base which was operative in Tennessee-Virginia, and then quoted $2.21, as you said, in order to have a uniform quotation in Bristol, Tennessee-Virginia. Then you referred to it as an arbitrary price. How did you determine the arbitrary price in such case?

A. Well, there are customers located in Virginia, whose post office address and delivery is Virginia, and their customer is located in Tennessee, who would get deliveries at these same poin 's as the Virginia dealer, those located in Virginia. We could not, as we saw it, sell cement at a higher price and get any business than was being quoted by our competition at that point.

5125 Q. Well, I understood you to say you felt the practical situation required you to make the same price to your customers in Bristol, Tennessee as in Bristol, Virginia—it is Bristol, Tennessee-Virginia that I am thinking of. I still do not understand how you got at the arbitrary on the Bristol, Tennessee, when it was on the State line.

A. Bristol, Tennessee, perhaps Mr. Wooden, you do not understand me. There is a street in Bristol called State Street. On one side of that street is Virginia; the other side of that street is Tennessee.

Q. Yes, I thought that was about the situation.

A. So a customer in Tennessee, located in Tennessee in the State of Tennessee, probably and I think does receive shipment at a point that is located in the State of Vir-

ginia, and vice versa with dealers living in the State of Virginia.

5126 Q. When you encountered a change in the price as reported by your salesmen put into effect by non-basing point mills, do you figure that back in a similar way as to what you have described?

A. We have found quotations issued by mills who were non-price points, and we have checked those quotations back, as we did similar one, but we did not find those quotations as being made upon their own mills.

Q. In other words, you found that they had checked them back to the basing point mill?

A. I do not know what they did.

Q. Did you check them back to find if they were based on the basing point mill?

A. Well, in many instances it probably would not 5127 be necessary to check back. We had checked our own prices. We found they would be uniform with ours, and we assumed—

Q. (Interposing) That they used the same price?

A. The same price.

Q. The same price base?

A. The same price base, yes, sir.

Q. When you figured back from the destination price to ascertain the base price, how do you know that the result you get is a base price, instead of representing a special price for the destination which you started to figure from?

A. Well, we do not rely just upon one particular quotation, but we get quotations from various destinations.

Q. Now, how do you know there are not special prices for those various destinations, instead of changes in the base price?

A. If we find a sufficient number of them we have to assume that that is the fact.

Q. How many does it take to make you draw that assumption?

A. We have no specific number or definite number, Mr. Wooden—we have to use our judgment.

Q. Are two or three cases enough?

A. No, we probably want more than that.

Q. Half a dozen?

A. Well, it would depend if they were half a dozen all at one destination, we would not rely on that.

5128 Q. What I am trying to get is some idea of the number of cases, whether half a dozen or twenty, or what,—how many times you have to have figures.

A. Mr. Wooden, our salesmen usually send us in on a change in price quotation from a number of competitors, if they find it; now, there may be half a dozen, a dozen, there may be fifteen, there may be twenty, there may be thirty or more. We have no prescribed rule as to the quantity we should get.

Q. Do you wish us to understand that your only source of information as to base prices has been the method which you have described?

A. We get that information from these quotations, yes, sir.

Examiner Norwood: He said the "only"—was that the only source?

The Witness: I had not finished, if you please.

Mr. Wooden: All right.

The Witness: We get this information from our—from quotations, and we have no other method, no other way of getting those base prices.

Q. Do you mean to say that you have not during your connection with the Volunteer Company obtained the price base at basing point mills in any other way than the way you have described?

5129 A. I may have sometime casually have met the man and asked him what the price was at a certain point.

Q. Basing point price?

A. I should then take that information and figure back from our own information as to what the price base point was.

Q. Did you ask him what his base price was?

A. No, sir.

Q. What price did you ask him, what his destination price was?

A. Yes.

Q. And then figured back just like you did before?

A. Yes.

Q. Have you ever had a basing point mill furnish you direct information as to what their basing point price was?

A. Not that I recall, no, sir.

5131 Q. Have you received at any time any telephone communications from basing-point mills giving you their base prices?

A. No, sir.

Examiner Norwood: Is this mill a member of the Institute?

The Witness: The Volunteer Company?

Examiner Norwood: Yes.

The Witness: Yes, sir.

Examiner Norwood: Do you get price information from them?

The Witness: No, sir, we have gotten freight rates from them.

Examiner Norwood: Information as to change in
5132 prices?

The Witness: No, sir, we have gotten change of freight rate, but no change of prices.

By Mr. Wooden:

Q. Do you notify them of your prices?

A. Not The Cement Institute, no, sir.

Q. Whom did you notify?

A. We do not notify anyone since the Code was abolished.

Q. Do you mean since the Trade Practice Committee ceased functioning?

A. No, sir, since the Code was abolished.

Q. Are you not aware that the Trade Practice Committee kept on after the Code stopped functioning?

A. We never filed any prices under the Code.

Q. How sure are you of that?

5133 Q. The question is whether or not he had not filed prices with the Institute after the regime of the Trade Practice Committee, which succeeded to the Code Authority.

5134 The Witness: Immediately after the Code was discontinued, I remember a telephone call from my superior telling me immediately to discontinue filing prices and to file no more prices, and to the best of my knowledge and belief, we have not filed prices since the Code was done away with.

By Mr. Wooden:

Q. Did you have legal advice to discontinue it?

A. My executives may have. Personally, I did not.

Q. Referring to Exhibit 274-F, was that about the time that you discontinued the filing of prices?

A. I think the Code went out in May, 1935.

Q. Yes.

A. When you say about the time, this is June 29. It was prior to June 29 when we quit filing prices.

Q. This letter from Mr. Hanahan to Mr. Reiter notifying him that you were discontinuing—do you recall that letter?

A. I can not identify the letter.

Q. It is already in evidence; so it would appear that you are right in your testimony that your company did discontinue filing prices immediately following the code?

A. I do not think it is apparent I am sure of it.

Q. All right, sir. When you figure back from the destination price reported by your salesmen to get the
5135 base price, do you use the Institute freight rate
5136 books for that purpose?

A. We used the freight rates shown in the Cement Institute along with the published tariffs sometimes.

Q. As I understood you yesterday, you used the Institute book to figure destination prices from the base without reference to your published tariffs?

A. Mr. Wooden, we made use of them both. Let me say this: So far as the Cement Institute rate book is concerned, it means nothing except the matter of convenience and economy. We are a small organization and have no organized traffic department. We have a rate clerk whom we speak of as a traffic manager.

Q. It serves the convenience of enabling you to meet competition at certain destinations?

A. It serves us as a convenience to arrive at freight rates that we need to arrive at in the various operations of our business. It is just as necessary to have the freight rate from our mill to destination as any other point.

5138 The Witness: Your Honor, I do not intend to be evasive, but it would take me quite some time to determine, and I do not know then whether I could exactly determine what is meant by a great many of these questions. I helped prepare this questionnaire and I remember at the time it was very hard for me to determine just what the questions really meant in many instances.

Examiner Norwood: It is your preparation?

The Witness: Yes, I assume this is ours. We made up

one. I do not see any mark to indicate it is ours. Is that Knoxville there (indicating)?

Examiner Norwood: Do you believe the statements therein are true?

The Witness: I presume so. I do not believe we made any untrue statements in making it out.

By Mr. Wooden:

Q. Were they taken from your records?

A. Yes, sir, as I recall, but I cannot tell you the whys or the wherefores of the answers to those questions there without giving a great deal of study to it.

Q. I will ask you if the $1.90 at the head of the column headed January, 1933, was the sum of the base price plus the freight to your mill point?

Mr. Leisure: Now, I have already objected to the use of the exhibit, which is not in evidence.

5139 Examiner Norwood: I think the objection should be sustained, unless the witness will state that it refreshes his recollection, but counsel may offer it in evidence.

Mr. Wooden: Your Honor, I will offer at this time the questionnaire of the Volunteer Portland Cement Company in answer to the Clark and Burns questionnaire, marked for identification 972-2d, 976-10g to 10q and 972-2e.

Q. Mr. Parsons, showing you now exhibits marked for identification 972-ee and 976-10g to 10q, are those parts of the questionnaire submitted by your company to

5140 Clark and Burns.

A. Mr. Wooden, we made out a questionnaire that was sent to Clark and Burns, but all the figures here are typewritten or practically all of them and I see some pencil notations made on here that I cannot identify and the typewriter of course I cannot identify, but I will have to assume this is our questionnaire. But I cannot state.

Q. Have you any doubt about it?

A. You understand I am trying to be very careful.

Q. Yes, I understand.

A. I think it is, but I do not see anything here that would lead me to identify it positively.

Mr. Wooden: Well, I am making the offer, your Honor.

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Norwood: Look those over and state your objection.

Mr. Leisure: Your Honor, certain questionnaires and answers are now being tendered by counsel for the Commission in evidence. He has stated that these questionnaires were produced, and the answers thereto, by the subpoena duces tecum. The witness has stated that he assumes these are their questionnaires and answers, so as to the identification I raise no objection, as to
5141 that feature.

5143 (COM. EX. 972-DD, 976-10-G to 10-Q and 972-EE were offered and received in evidence.)

Mr. Leisure: For the record, I am merely repeating the objections made yesterday as to Clark and Burns material and I want the same objection to go to this.

Examiner Norwood: Yes.

By Mr. Wooden:

Q. Now, according to your letter which you wrote Professor Burns, Exhibit 971-14P, you inform him that the questionnaire should be corrected to show the freight rate of .7030 from Mitchell, Indiana. Do you find that correction made in ink handwriting on Exhibit 976-10G?

5144 A. Yes, sir.

Q. You also inform him that the correct rate per barrel from Speed, Indiana was .6460. Do you find that correction made on this same paper?

A. Yes, sir.

Q. And at one time it was 64 cents, plus, and at another time it was 70 cents, plus; that is right, is it not?

A. I think that the 64 cents plus, Mr. Wooden, is intended to represent the freight rate from Speed, Indiana.

Q. That is right; there are two different basing points at two different times.

A. Yes, sir.

Q. What did you figure the mill base was at those two times; you have there the price delivered at your station and the freight rate. What was the mill base price?

A. I will have to figure this.

Q. Do you not subtract one from the other, in the case of Speed, 64 from the $1.55?

A. You are asking me what was the mill base price?

Q. Yes.

A. In June, 1932 and January, 1933?

5145 Q. That is right.

A. Did you ask me the mill price?

Q. Yes, sir, the mill price.

A. Unless I have made some mistake, I think that the mill base at June, 1932 at Speed, Indiana was $2.05, including cloth bags and cash discount.

Q. Why include those; are they included in this figure here of $1.55?

A. No, sir.

Q. Well, I want them on the same base and I would like to know why you add the freight from the basing point to your destination in order to get the mill base price.

A. That is just a matter of convenience in figuring.

Q. Why did you add the freight instead of subtracting?

A. Well, probably it was just my individual manner of figuring it, Mr. Wooden. I took the figure of $1.55, this figure shown here, plus 646, plus 50 cents and bag discount which made a price of 269.9 at Knoxville. 270 would have been our price.

5146 Q. I asked what the mill price at Speed was?

A. Then I deduct from that the freight rate, as I see it, from Knoxville to Speed, which gives me $2.05

Q. Was not the price delivered at your station $1.55 based on Speed, Indiana?

A. No, sir, I think my price was $2.70 based on Speed, Indiana.

Q. Do you mean if you were to deliver into Speed?

A. No, sir, if I were to deliver at Knoxville.

Q. Is not this your Knoxville price here, $1.55?

A. No, sir.

Q. What is it?

A. The questionnaire—

Q. (Interposing): What does the questionnaire call for?

A. "What was the price per barrel net (that is net price for cement in packages after deducting packages and discount) at the railroad station at which your mill is located?"

Q. Well, $1.55 was your station price then, was it not?

A. As I told you awhile ago, this was very confusing to me, when we made up this questionnaire, it has been several years, and I do not recall from memory.

Q. As a matter of fact, is it not common knowledge that in the cement industry in June, 1932, the date of that, the mill nets and the mill base prices were much below $2; you figured out a price of over $2 there at the mill—mill base.

5147 A. Well, Mr. Wooden, will you look here a minute: "Name all base points governing sales at the above railroad station." I took that to be these places here.

Q. Yes, sir.

A. Probably I have misread that—I think I got the wrong idea.

Mr. Wooden: All right, try it again.

Examiner Norwood: We will take a five-minute recess.

(Whereupon a short recess was taken, after which the proceedings were resumed as follows:)

By Mr. Wooden:

Q. Now, Mr. Parson, I believe you were about to refigure the thing I asked you to figure before, namely, the base price at Speed, in June, 1932, based on the figures that are contained in Exhibit 976-10-G?

A. Assuming that this figure of $1.55 represents a price at Knoxville without cloth package, I am deducting from that $1.55 a freight rate of 65 cents.

Q. Giving you a base price at Speed of how much?

A. 90 cents, if I make no mistake.

Q. As a matter of fact, does not that correspond to your general recollection of how low base prices got at that time?

A. I remember that at about that time prices were very low.

5148 Q. Would you calculate the base price at Mitchell, in January, 1933, in the same way as you did for Speed in June, 1932?

A. Assuming that the figure here shown of $1.95 includes the deduction of package and discount, I am deducting 71 cents as shown in this exhibit, which would indicate a price of $1.24 if I make no error.

Q. So, in the case of Speed—the Speed mill base price in June, 1932,—you had a freight advantage over Speed of about 65 cents into Knoxville. Is that right?

A. I should say of about 60 cents; my freight was about 60 cents less for delivery to Knoxville from our mill than for delivery from Speed.

Q. I see. If you had reduced your price in Knox-
5149 ville by 60 cents, you would have shut Speed out of the market entirely, would you not?

Mr. Leisure: I object to that question; we are just dealing in speculations.

Examiner Norwood: That is not a speculation.

By Mr. Wooden:

Q. You would have reduced their mill base to 30 cents, would you not, or about 30 cents?

A. We did about that time considerably reduce our price in Knoxville, with the hope we would show some increased tonnage. We did not get that result. Our competition immediately met our price and we received no benefit from it.

Q. Well, were you basing on Speed at that time?

A. We were not basing on any place at that time. Do you mean when I had this special price?

Q. Yes, when you had this special price at Knoxville.

A. There was no base.

Q. That was just an exception to the way you sold the rest of your goods; you had a special price, an arbitrary price for Knoxville?

A. A special price for Knoxville.

Q. Here in January, 1933, you had a 70-cent freight advantage over the Mitchell base mill?

A. Well, I do not remember that figure.

Q. Subject to that 5-cent adjustment?

5150 A. The freight rate from Mitchell to our mill I assume to be there 74 cents.

Q. 70 cents plus?

A. 70 cents; then there is a differential there from our mill of about 5 or 6 cents.

Q. And with all that freight advantage against those basing point mills, you nevertheless thought that you had to be, in order to be competitive, you had to add the freight from the base mill to your home territory?

A. We would still try to meet our competition price, Mr. Wooden, as we found it there, with the exception, as I said, of this special price we put in in 1931 or 1932.

Q. Why did you not lower your price enough to shut off Speed mill completely out of the market, with that big freight advantage of 65 or 70 cents?

A. Well, I will repeat, sometime along about that time we put in this special price, which I considered a very

low price. Our price for delivery in Knoxville was $1.90, and we saw no reason why we should continue that price or make a lower price when we received no advantage from it—we received no increased tonnage.

Q. Was not the lower price prior to June, 1932; was it not in 1931?

A. We put it in in July, 1931, and threw it out in May, 1932, if I remember correctly.

5151 Q. So your June, 1932, figure would be this higher price?

A. Our June, 1932, would be our meeting the competitors' price.

Q. That would be the restored price?

A. Yes, sir.

Q. You have, as you go toward the basing point, you have a lessened freight advantage as you near the basing point, is that right?

A. Yes, sir.

Q. And until you get to the half-way point freight-rise you have some freight advantage?

A. Yes, sir, there is a point, of course, between my mill and the price base mill where the freight rates are about the same. There is some little zoning in there that is used by the railroads that I am not familiar with.

Q. Between that point and your mill you have a freight advantage from the basing point mill?

A. Yes, sir.

Q. That enables you to increase your realization by the amount of that freight advantage?

A. I think it is obvious when we have a less freight rate to a given point than someone else that we have an advantage.

Q. And that advantage goes to increase your mill net realization in that territory, does it not?

A. The gross mill net; yes, sir.

5152 Q. What do you mean by gross mill net?

A. Well, the difference between the mill net, as I see it, and an absolute mill net would be the costs—and that does not enter into my department, you understand—administrative costs, et cetera, depreciation, et cetera.

Q. Your mill net includes no freight, does it?

A. In arriving at a mill net in my department, we take our destination price and deduct from that the freight.

Q. The freight from your mill?

A. The freight from our mill and the cost of packages.
Q. And whatever discount is allowed?
A. The cash discount; yes, sir.
Q. And what is left is your mill net?
A. In my department; yes, sir.
Q. Do you make a report to the officers of your company of what your total sales are from month to month or any other period?
A. I think I give our executives a figure of our total sales for each month.
Q. Is that a total of your various mill nets from your particular sales?
A. When I say sales I mean in barrels.
Q. In dollars and cents, do you make a report?
A. I do not; no, sir.
Q. Is there one made?
5153 A. I think there is probably one made.
Q. A report in dollars and cents—total sales in dollars and cents: Is that a total of the mill nets received? A. I think such a report is made to our executives which shows the total number of barrels shipped and the nets realized from those barrels.
Q. In other words, the total sales is the equivalent of the total mill nets? Is that right?
Examiner Norwood: That is mill realization, is it not?
The Witness: I will have to repeat that the only report that I know about is a report sent to our executives showing the number of barrels shipped and the nets reflected from that shipment after having deducted package and cash discount.

By Mr. Wooden:

Q. And you treat the total mill nets as the total of your sales?
A. I do not know as I understand you, Mr. Wooden.
Q. Well, the purpose of this report, I assume, is to show the executives how much the total sales are.
A. The total sales and the net received for those shipments, less the—
Q. The total number of barrels and the dollars and cents equivalent in sales?
5154 A. Yes, sir.
Q. Is the total of those mill nets which you compare with the total of your costs—do you do that in order to determine whether you are making or losing money?

A. I generally leave the fact of whether or not we are losing or making money, to the hands of our secretary and treasurer and our general manager. I only attempt to look after the sales end of it.

Q. You do not pay any attention to whether you are losing or making money on your sales?

A. If we might have an inquiry sometime on the quantity of cement that looked mighty low, I might probably ask our general manager if we are interested in a certain quantity of cement which reflected the net price—a certain net price.

Q. I am speaking of your business as a whole—whether your total mill nets compare with your total costs over a period of time and not as to an individual sale.

A. I do not have anything to do with our accounting. I know nothing whatsoever about it and I have given you all the information I have on that.

Q. Do not you ever compare the total of your mill nets with the total of your costs over a period of time to see whether you have lost or gained?

A. No, sir; I do not know our real costs. My office is located seven miles from the plant. I am in the
5155 sales department and I only deal with sales and our accounting and costs, et cetera,—everything in connection therewith is kept at the plant, and there are times when I will not go to the plant more than twice a year.

Q. The cost records are kept only at the plant and not at Knoxville?

A. Our plant is located seven miles east of Knoxville and the accounting and costs are all done at the plant and not in the sales office which is in Knoxville proper.

Q. And not in the sales office or the Knoxville office?

A. No, sir. We speak of it as Knoxville.

5156 The witness identified Com. Ex. 1073 B as a letter addressed to Volunteer, signed by Mr. W. Z. Betts, purchasing agent; Com. Ex. 1073 A as a letter addressed to some of "our" salesmen by him; Com. Ex. 1073 C as a letter addressed to Mr. W. Z. Betts, purchasing agent, of State Highway and Public Works Commission, Raleigh, North Carolina, and signed by witness as sales-manager.

5156 Mr. Wooden: I will offer them in evidence.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: No.

(COM. EX. 1073-A, B, and C was offered and received in evidence.)

5161 Q. Showing you a paper marked 1073-D for identification, will you state what that is?

A. I think this is a memorandum which I made about the time that I went to work for the Volunteer Cement Company in 1928—

Q. In your handwriting?

A. In my handwriting—which I brought with me from Birmingham, Alabama, when I left my former employer, the Atlas Cement Company.

Q. What enables you to fix the time? There is no date on it.

A. I happen to remember the place it was in, in our files, when it was given to Mr. MacDonald.

Q. Did you use it with the Volunteer Company in
5162 figuring your prices?

A. I do not know that I used that particular one, Mr. Wooden, because that memorandum was made up prior to the time we came into production. I brought it along with me just as a matter of personal information.

May I say this here, that at the time I went into the employ of the company, there was only one other person connected with the company who had had any experience in the sale of cement.

Q. Is that first word in the memorandum, an abbreviation for Charleston?

A. I think it is; yes, sir.

Q. Your best approximation of the date is around 1928?

A. I would say it was the early part of 1928. That is when I brought it to Knoxville with me, and I made it up probably some time prior to that date when I knew I was going to work for the Volunteer Company.

Q. Were there bases in effect at Jacksonville and Miami at that time?

A. Mr. Wooden, that has been ten years ago and I would have to rely on that memorandum.

Q. Did you find base prices at Gulf ports and South Atlantic ports affected your delivered price in any territory?

A. At the time I made up the memorandum, naturally I did not know what our territory would be. I went

5163 to Knoxville in February, 1928—the first of February or thereabouts—and we did not get into the market until June, 1928.

Mr. Wooden: Well, I offer that in evidence (handing paper to Mr. Leisure).

Mr. Wooden: Your Honor, as to the time, the complaint alleges this combination has been going on for more than eight years last past. There is no limit as to time that the thing can be traced back to its beginning, I do not care whether it is 20 years, as far as that is concerned.

5164 (COM. EX. 1073-D was offered and received in evidence.)

Q. Mr. Parsons, do you have a salesman by the name of Homer L. Baker?

A. No, sir.

Q. Do you know who he is?

A. He is a salesman, or was a salesman for the Louisville Cement Company.

Q. Do you have a man in your organization by the name of Drummy?

A. Yes, sir.

Q. Who is he?

A. Assistant sales manager.

Q. What is his first name?

A. John.

Q. Showing you papers marked 1073-E and 1073-F and G for identification, will you identify those as copies of papers which you furnished to Mr. MacDonald, an agent for the Commission?

5165 A. I can identify 116, but I do not remember—

Q. What do you mean by 116?

A. I beg your pardon, it is 1073-E; I can identify 1073-E.

Q. As a paper you furnished Mr. MacDonald?

A. Yes, sir; if Mr. MacDonald says he got this other one out of our files, I do not think so; I have no recollection of ever having seen this paper here.

Q. All right, do you take it the information addressed to "John" from Homer L. Baker in 1073-E is your Mr. Drummy?

A. Yes, sir; Mr. Drummy.

Mr. Wooden: I will offer 1073-E.

5166 Mr. Leisure: May I ask the witness a question about this exhibit? There has been an exhibit offered, your Honor.

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Exhibit 1073-E for identification was shown to you this morning, Mr. Parsons.—Have you seen the exhibit before? Do you know what it is? I notice there is something clipped off the top—the letterhead or whatever it was.

A. Yes, sir; I have seen it before.

Q. You have seen it before?

A. Yes, sir.

Q. Do you know whether it was received after the bids were opened or before the bids were opened?

A. This exhibit here we received after the bids were opened.

Q. Who is this J. N. O. (indicating)?

A. That is John Drummy, of my company.

5167 Q. And you saw it at the time it was received or approximately?

A. Approximately at that time; yes, sir.

Mr. Leisure: I have no objection.

(COM. EX. 1073-E was offered and received in evidence.)

By Mr. Wooden:

Q. Do you know why your Mr. Drummy asked the salesmen of the Louisville Cement Company for the information that is reported on this sheet?

A. I do not know where the bid was submitted to, but we had bid on this particular invitation and we did not know the result of that bid. Mr. Drummy's home is in Lexington, Kentucky, and I think Mr. Baker is in Lexington, Kentucky, and we were anxious to find out where we stood in connection with the bid. Sometimes we are notified by the governmental departments that our bid is accepted or bid is rejected or we are not awarded the business and in some other instances we are not given that information and Mr. Drummy, I recall, saw Mr. Baker in Lexington and asked him if he could get us the results of that bid.

Q. And, as reported, you bid the same price as three

other concerns while the fifth, the Lehigh Company,
5168 was low by one-tenth of a cent?

A. That is all I know about it, Mr. Wooden—what the record shows there.

Q. And the Lehigh Company, being one-tenth of a cent lower in their bid, got the business?

A. I presume so. I do not know who got the bid.

Q. The report is that the Lehigh Company being the low bidder was awarded the cement business?

A. Probably; yes.

5172 Q. Showing you papers marked 1074-A and B for identification, will you identify them as copies of invoices of the Volunteer Portland Cement Company furnished to Mr. MacDonald, an agent of the Commission?

A. I do; yes, sir.

Mr. Wooden: I offer these in evidence. (Handing papers to Mr. Leisure.)

Mr. Leisure: No objection.

5173 (COM. EX. 1074-A and B was offered and received in evidence.)

Q. I take it these are samples of the invoice forms and your method of invoicing purchases?

A. Yes, sir.

Q. The freight which is deducted from the invoice—that is the actual freight from your mill to destination?

A. Yes, sir.

Q. And the delivered price at the destination is the equivalent of the base price plus the freight from the base point to that destination?

A. Yes, sir.

5174 Q. Showing you a paper marked 1075-A for identification, will you identify it as a copy of a letter written by you to the president of the Volunteer Cement Company dated May 19, 1931?

5175 A. I do.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1075-A was offered and received in evidence.)

Q. In this letter of yours, 1075-A, you refer to mill nets at certain points in Virginia, ranging from 91 cents to 96 cents, and then said, "Of course we can not make any money at these prices." Does that illustrate your testimony of this morning in which you compare your mill

net with your costs to see whether you can make any money at such prices?

A. I probably discussed those nets referred to there with our general manager and asked him if we wanted any business at those points and we probably were not awarded any large quantity of contract business, but we had certain dealer connections in those territories we would like to maintain our position in the market with them.

Q. You considered your mill net at those points your price?

A. No, sir, in my opinion our price is our destination price.

Q. You said "prices" here, when you were talking about the mill nets, did you not?

5176 A. I always have in mind when I say "our prices," our destination prices.

Q. I suppose you want to get as high a price as possible?

A. Naturally, we want all the money we can.

Q. Do you want to get as high a price as possible?

A. Well, if as high a price as possible means more money for us, we would like to have it.

Q. If your destination price is your price, why do you not go into a market that will take a delivered price of five dollars, and say that is my price there, and you will get the highest price that way, will you not?

A. If I were quoting five dollars and somebody else were quoting $4.75, I would not realize any profit, because I could not sell any cement.

5177 Q. And the thing that determines whether you are making money is to compare your costs with your mill nets, is it not; did you not say that this morning?

The Witness: Our mill nets would reflect whether or not we made any profit, yes, sir.

By Mr. Wooden:

Q. By comparison with your costs?

A. Yes, sir.

Q. Is not that the way a man determines whether he is making any money, to compare his costs with his price?

A. The difference between your cost and the amount you get for your product shows you a net, and if your

price,—if the sale has been made at a price too low, where your cost is greater than what you get for it, why you have lost money.

5178 Q. And you consider your mill net what you get for it?

A. The mill net is what we get for it after we have deducted our transportation and cost items.

Q. It is all you get for it that goes into the treasury of your company, is it not?

A. Will your ask that question again?

Q. Your mill net is all that you get for it that goes into the treasury of your company, is it not?

A. Yes, sir.

Examiner Norwood: I think we covered that this morning.

By Mr. Wooden:

Q. I am showing you a paper marked 1075-B. Will you identify it as a copy of a letter written by you to your Mr. Hanahan March 31, 1928?

A. I do.

Mr. Wooden: I offer it in evidence, this exhibit. (Handing paper to Mr. Leisure.)

(Discussion off the record.)

Examiner Norwood: Is there any objection to that?

Mr. Zimmerman: I will be through with it in half a minute. May I ask the witness who the gentleman is that that is addressed to?

Mr. Wooden: He is shown in the other letter to be president of the Volunteer Company.

5179 Mr. Zimmerman: He was then president?

Mr. Wooden: I do not know.

The Witness: Yes, he was president and is now president of the Volunteer Company.

Mr. Leisure: We have no objection to the exhibit, but I do want to point out that the exhibit is dated as far back as March 31, 1928. It seems to me it does not have much bearing on the issues in this case.

(COM. EX. 1075-B was offered and received in evidence.)

5182 By Mr. Wooden:

Q. In the preceding exhibit written in 1931, we were talking about the mill nets in Virginia, 91 and 96 cents, I believe, certain places?

A. Yes, sir.

5184 Q. Did you make any sales to the State of Virginia in 1936 or 1937?

A. Yes, sir.

Q. How large a quantity?

A. I do not remember, Mr. Wooden, but they were only nominal shipments.

5185 Q. In what part of the State were they delivered?

A. I cannot recall right now the specific destinations.

Q. Were they in the western part of the State?

A. I would say this, that I believe we did at Portsmouth, Virginia—I do not have the bid, but I am not questioning that—but I took up with Mr. Sneed who, I think, was the purchasing agent at that time, that although we had bid at various destinations in his State, I wanted him to bear in mind we did not want business that would reflect an unsatisfactory return to us and as a matter of fact, I do not think we have ever shipped the Virginia Highway Department a carload of cement that would net us less than $1.20 ranging up to $1.75 a barrel.

Q. According to Exhibit 411-A, you made a bid to the Highway Department of Virginia at a $1.04 mill net at Richmond.

A. We may have.

Q. Why would you make these bids to Virginia at points running as low as 82, 102, and 103, if you were not willing to sell at those prices?

A. As a matter of information to the purchasing department as to what our prices were at those points.

Q. You were offering to deliver there.

A. We quoted that price, but I was on record with Mr. Sneed that we did not want business that would give

5186 us an unsatisfactory average net return.

Q. At the same time were you getting a mill net from T. V. A. as high as $1.43?

A. I think yes. I do not remember whether that $1.43 included the cash discount or not. I think it did. Our absolute net was around $1.43.

Q. Were you getting a mill net as high as $1.40 on any of your commercial business around Knoxville?

A. I got a mill net as high, I think I can safely state, as $1.75 from the Virginia Highway Department.

Q. At what time? 1936?

A. Right about that time. I do not remember definitely. It might have been—I think it was right about the time those bids were submitted in 1936 or 1937.

Q. I am asking you whether you got as high as $1.40 or more from your commercial customers in and around Knoxville?

A. What do you mean—in the city of Knoxville?

Q. Yes.

A. We were getting more than that.

Q. More than $1.43?

A. Yes, sir.

Q. At the same time you were bidding to take a mill net at Portsmouth, Virginia, of 82 cents?

A. We would not accept business at Portsmouth, Virginia, at 82 cents.

5187 Q. You offered to.

A. We quoted that price but I qualified my bid by stating to the man we quoted that we did not want business like that.

Q. Referring to Exhibit 876-10G, being a portion of your questionnaire to Professors Clark and Burns, I note that in June, 1932, your maximum price to your mill was $1.55 and in January, 1933, it was $1.95. Is that right?

5188 The Witness: If I understand this question correctly, Mr. Wooden, I think that is right. I will repeat as I did this morning it is very confusing to me.

Mr. Wooden: Well, considering the conditions of the depression—

The Witness: May I take just a minute there, please?

Mr. Wooden: Yes.

The Witness: May I see that again?

(The Witness took the exhibit and made a calculation.)

The Witness: That is right.

By Mr. Wooden:

Q. Do you say that is right?

A. I will have to let it stand as the best I can determine.

Q. Considering the conditions of the depression between June, 1932, and January, 1933, and the conditions of competition in your industry, how were you able to increase your price 40 cents a barrel at that time?

A. We found quotations quoting prices that were higher than we had previously been quoting.

Q. And you met those prices?

A. And we attempted to meet those prices.

Q. And that is what enabled you to raise your price 40 cents above between June, 1932, and January, 1933?

5189 A. Well, we had previously had in special price for our cement in Knoxville, believing we could possibly show some increased tonnage. We did not receive the increased tonnage therefore we abandoned that special price and went back and met prices quoted by our competitors.

5190 Q. Mr. Parson, was the cement industry in a depressed condition in 1932?

A. I think not only the cement industry but most every other industry was depressed in 1932.

5193 The witness identified Com. Ex. 1076 i as a photostat of an office memorandum to Mr. Roberts and Mr. Drummy dictated by him; Com. Ex. 1076 H as a memorandum to Mr. H. N. O. Wade, "our" salesman; Com. Ex. 1076 G as a memorandum to "our" Mr. Mooney, salesman, from Mr. Drummy; Com. Ex. 1076 F, E, D, C and B

5194 as memoranda; Com. Ex. 1076 A as a letter addressed to witness from Mr. Hanrahan, President of the Company.

(COM. EX. 1076-A to I, inclusive, was offered and received in evidence.)

5196 Q. Showing you papers marked for identification 1077-A to O, inclusive, will you identify those as copies of papers coming from the files of the Volunteer Company and provided our Mr. MacDonald?

A. I do.

Mr. Wooden: I offer them in evidence (handing papers to Mr. Leisure).

Examiner Norwood: Is there any objection?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Is the Carolina Portland Cement Company a dealer?

A. Yes, sir.

Mr. Leisure: We have no objection to these exhibits being offered, provided that Your Honor limits them—the ones that are inter-office memoranda—until such time as Your Honor feels that this company is connected up with any kind of so-called charge in the complaint of conspiracy and I think they ought also to be limited under the rule of

law that they cannot be used as evidence of a conspiracy until one has been proven otherwise.

Examiner Norwood: I think in this case that the
5197 conspiracy will or will not be established by the entire record.

5198 (COM. EX. 1077-A to O, inclusive, was offered and received in evidence.)

5199 By Mr. Wooden:

Q. Mr. Parsons, did the Volunteer Portland Cement Company figure in the case involving the proposed acceptance of city warrants for the payment of cement in Knoxville during 1934?

A. During the Code period, it seems to me there was a provision that we were not to accept city warrants in payment, or as cash payments, for cement sold.

Q. Yes, I think the Code will show that, but I asked you if the Volunteer Company was involved in proposed acceptance of the city warrants from the city of Knoxville?

A. For a long time the city of Knoxville made all their payments with city warrants; we would sell them a car of cement—

Q. (Interposing.) And take city warrants?

A. The city warrants were tendered to us in payment of that cement, and we asked the Code Authority about it, and they ruled it would be an unfair practice for us to accept those warrants.

Q. Did you then discontinue the acceptance of the warrants?

A. What we did was, we found a purchaser for those warrants and converted them into cash, then accepted the cash through our records in payment for the cement.

Q. Did you get them converted at a discount?

A. No, sir; at par.

5200 Q. So that you actually received as much in cash as though you had gotten the cash from the city in the first instance?

A. Yes, sir.

Q. Was that acceptable to the Code Authority?

A. I do not know, sir; as much as we accepted cash we did not question the transaction.

Q. Have you continued to accept city warrants in Knoxville sin the Code?

A. After that we did accept city warrants and immediately converted them into cash as we did previously.

Q. As you did before?
A. Yes, sir.
Q. How long has that continued?
A. I do not remember, Mr. Wooden, I do not believe at the present time that the city is using city warrants any more, I do not remember any having been tendered to us recently.

Mr. Wooden: I will offer at this time, your Honor, Exhibit 927-1-Q, which is one of the papers produced under subpoena, a ruling of the Code Authority regarding city warrants; I do not think it calls for any further identification than that.

Examiner Norwood: Is there any objection?

Mr. Leisure: Yes, we have two objections to this: This deals with the Code period and we raise that objection, and this document is produced under this subpoena,
5201 and we of course continue to make our objections under that subpoena, we feel that the document should have been passed on as to its materiality before being received, and that has not been done and therefore we object to the exhibit.

Examiner Norwood: We are going to pass on that right now.

Mr. Leisure: I say I am also objecting to the materiality.

5203 (COM. EX. 927-1-Q was offered and received in evidence.)

5207 *Cross-Examination by Mr. Leisure.*

Q. Mr. Parsons, a few minutes ago, just before the recess, Mr. Wooden was questioning you with regard to meeting competitors; do you meet a competitor's destination price, or the price of your competitor's mill net?

The Witness: We attempt to meet our competitors' destination price.

By Mr. Leisure:

Q. And which is the price, the mill net, or the amount which the buyer must pay?
A. The amount which the buyer must pay.
Q. Now, you told us, Mr. Parsons, that you were employed by the Volunteer Cement Company?

5208 A. Yes, sir.

Q. And the Volunteer, you said, is located in Knoxville, Tennessee?

A. Yes, sir.

Q. How old a mill is that; how long has it been there; how long have you been in business?

A. Since June, 1928.

Q. And is it a small mill or a large mill?

A. A small mill.

Q. Who is it, Mr. Parsons, that determines whether a mill will be a base mill or a non-base mill; is it the sales manager?

A. No, sir, not to my knowledge; I do not know
5209 who determines a basing mill; so far as my own mill is concerned, as I have testified, that was a question that was answered by our own executive.

Q. Now, when you started doing business, you say you started doing business there in 1928, were you the only cement mill in that section of the country?

A. The nearest mill to us was a hundred miles away.

5210 Washington, D. C.
Thursday, April 7, 1938.

5211 Examiner Norwood: The hearing will come to order. Pursuant to adjournment of yesterday, the hearing is reconvened at 10 o'clock A. M., April 7, 1938, in the Main Hearing Room of the Federal Trade Commission, 815 Connecticut Avenue, Washington, D. C. The appearances are the same.

Now, I have completed my study of these exhibits I have given very careful consideration to the whole batch of 112 exhibits proffered by the Commission, marked 1043-A to 5H's: These consist of notices and memoranda of meetings, letters, copies and circulars relating to the cooporative activities of officials of several railroads, cement manufacturers, respondents herein, the Traffic Executives Association, National Builders Supply Association and State branches and others, all of whom are named in the exhibits and stated by the testimony to be engaged in the common enterprise of discouraging or preventing the shipment of cement by trucks.

There is testimony, which has not been controverted, that

these letters and documents were taken from the files of these organizations which were cooperating with the respondents in this enterprise and the circumstances surrounding their existence, discovery and production are such to indicate their reliability. The facts and explanation concerning them are peculiarly within the knowledge of
5212 the respondents and the associated concerns.

In consideration of all the circumstances shown, it is clear that these papers are substantive evidence and are not properly excluded as heresay. They result from or are closely connected with the principal facts under investigation. In themselves they constitute information upon which these respondents are alleged to have acted and indeed some of them appear to constitute the actions themselves, taken in furtherances of alleged objectives.

They are circumstantial evidence. The fact that such reports and information were received and filed by these parties is sufficient, in view of the aliunde testimony and the surrounding circumstances to render them admissible.

(COM. EXS. 1043-A to II. inclusive, KK, to UU, inclusive, WW, to 4R, inclusive, 4V to 5H inclusive, were offered and received in evidence.)

There were three exhibits which are already received; that is, 4S, 4T and 4U, and two withdrawn—JJ and VV.

5213 Mr. Leisure: Your Honor is assuming that there is testimony as stated, and I assume your Honor has reviewed the testimony. I do not recall at the moment testimony in which it is stated that the railroads were engaged in common enterprise with the respondents in this case. But, assuming that there is substantive testimony to that effect in the record, I am still not clear as to how documents which have not been identified by the authors of the documents can be offered, if we are applying any rule of evidence at all, where we are deprived of any cross examination of the authors of the documents.

Examiner Norwood: I considered that very carefully; I think that they are sufficiently identified to constitute some evidence—that is constitute sufficient to admit them. Now, some of those objections go to their weight. The fact that these letters of Mr. Campbell were not submitted to him while he was on the witness stand goes to their weight, but those letters stand in the same category as a great many others that were in those files, and they con-

nected up with these other exhibits and other circumstances and the other testimony.

Mr. Leisure: I am interested in your Honor's ruling not merely from these exhibits, but as to what may hap-
5214 pen in the future.

Examiner Norwood: That is the only reason I made the statement. We are going to follow that rule straight through.

Mr. Leisure: Do I understand that letters can be offered here against us, without any opportunity of cross examining the authors and your Honor considers this applying rules of evidence?

Examiner Norwood: I think it is in accordance with the sound construction of the rule of evidence to receive those—in fact, I do not see how they could be reasonably excluded.

Mr. Leisure: Will your Honor permit us to take the question up to the Commission, because I think it should be determined.

Examiner Norwood: Certainly, counsel has his objections, and I will cheerfully abide by any rules the Commission may make.

5217 Mr. Leisure: I am not sure that I entered any formal objection to your Honor's ruling. I suppose that I had better put it on the record so that I might
5218 have an exception.

Examiner Norwood: Yes, sir; counsel has an exception.

Mr. Leisure: I would say at this time that the respondents intend to appeal from the ruling of the Examiner which admits in evidence the several papers covered by Exhibit 1043, as was indicated in our objection. We believe these papers do not constitute competent evidence and should not have been offered in evidence. With your Honor's approval, I will arrange informally with Mr. Wooden for the time of the argument before the Commission.

F. C. PARSONS, resumed the stand and testified further as follows:

Cross-Examination by Mr. Leisure.

Q. Mr. Parsons, when we adjourned last night, I think I had just asked you some questions about your being surrounded by mills—about your mill being surrounded by mills at the time it was established in 1928. I think you said the nearest one was one hundred miles?

A. Yes, sir.

Q. But there were a sufficient quantity of mills in other directions so that you had cement quotations in your

5219 local town at that time?

A. Yes, sir; there were mills immediately west of us, about 200 miles; mills approximately 100 to 130 miles south of us, and additional mills somewhat further south and southeast of us.

Q. So that there were numerous quotations.

A. As well as mills situated northwest of us.

Q. So that there were numerous price quotations in the market which you serve?

A. Yes, sir.

Q. You were not coming into a new territory to sell cement?

A. No, sir.

Q. When the Volunteer mill started, did it start out as a non-base mill, or did it start as a base mill and then change?

A. It started out as a non-base mill and is today a mill—a non-base price mill.

Q. And do the owners or executives determine whether or not a mill is to be a non-base mill?

A. They do.

Q. And could that be changed at any time—could you change to a base mill if the owners saw fit to do so at any time?

A. Yes, sir.

5220 Q. Mr. Wooden asked you yesterday or the day before—I do not recall which—if you meant to say that you were making a price of 82 cents in Portsmouth, Virginia, while you were, at the same time, attempting to sell to T. V. A. at $1.40. How long had it been—

Mr. Wooden: Actually selling at $1.43 plus.

Q. How long has it been since your company has paid any dividends on its common stock?

A. From statements that have been made to me by some of the common stockholders and by our treasurer, we have never paid a dividend on the common stock.

5221 Q. Do you remember being asked about whether you got 70 cents more than the Mitchell basing point was paying 70 cents freight?

A. Yes, sir.

Q. I think you said there was some deduction because you had a five or six-cent switching charge in Knoxville. Do you remember that testimony?

A. Yes, sir.

Q. Now, if the Mitchell mill added 70 cents freight
5222 to a $2 base price, what price would that mill net in Knoxville?

A. It would quote $2.70.

Q. Now, if you wanted to meet the competition in Knoxville, what price would you quote?

A. I would quote $2.70.

Q. In quoting these competitive prices which you have mentioned in Knoxville, of the $2.70 figure, does it
5223 follow that you would make a profit of 70 cents more merely because the Mitchell mill added 70 cents freight?

A. No, sir. I think, in addition to our switching charge, there are certain items of cost which would have to be taken into consideration before I could say what our profit is.

Q. Now, another thing: Mr. Wooden suggested to you that, as you sold in the direction of a base point mill which was setting the price in Knoxville, that your advantage decreased as you approached the base point mill. Do you recall that?

A. Yes, sir.

Q. And he suggested to you that that advantage continued until the half-way point was reached. Do you remember that?

A. Yes, sir.

Q. Now, let us see if that is correct, Mr. Parsons. The further you go from your mill in the direction of the basing point mill, the more freight you will have? Is that correct?

A. Yes, sir.

5224 Q. And as you approach the basing point mill, assuming its freight is 70 cents to Knoxville, what happens to the basing point mill's freight?

A. What happens to the basing point mill's freight as we approach it in the sales in the direction of the basing point mill?

Q. Yes. Does not it decrease correspondingly as yours increases?

A. Yes, sir.

5225 Q. Does that condition continue as you approach the mill?

A. Yes, sir.

Q. In other words, if the basing point mill's freight is 10 cents less, his price is also 10 cents less? Is that a fair statement?

A. Yes, sir.

Q. So, is it or is it not a fact that your profit is affected in two ways; first, by the reduction of price

5226 by basing point mill and, second, by the freight you pay?

A. That is true.

Q. So, if you are selling at this point (indicating) you have a freight of 10 cents to meet?

A. Correct.

Q. And you have a price of $2.60 to meet instead of $2.70?

A. Correct.

Q. So, how much do you sell for then, instead of $2.70, at that first point?

A. In that case, as illustrated, I will sell at $2.60.

Q. And that would be 10 cents freight that you would pay and you would be getting 10 cents less in profits?

A. Yes, sir.

Q. Therefore you would net 20 cents less instead of 10 cents less?

A. Yes, sir.

Q. That would constitute a double charge against your profit as you approach the basing point mill?

A. That is correct.

Q. Then, there is no question, is there, that as you approach the basing point mill, it has a 10-cent freight advantage and a 10-cent price advantage?

A. That is correct.

Q. With that condition existing, do you think you have an advantage until you get to the half-way point?

5227 A. No, sir, we do not.

5228 Q. Mr. Wooden suggested to you yesterday that the governing price was the combination of the lowest base price plus freight. Is that correct, or is it the lowest base price or the lowest combination of any base price, plus freight?

A. It is the lowest combination of a price base point plus the freight rate from the price base point to destination.

Q. Now, as to these freight rate books, Mr. Wooden also asked you some questions about your reasons for using the freight rate books and he suggested that your only purpose in using the freight rate books was to find freight from the base mill to a destination so that you could determine the price there. What happens in connec-

5229 tion with figuring your own freight prices?

A. You mean our own freight rates?

Q. Yes, sir—the rate that you would have to pay?

A. We use the Institute rate for that purpose in figuring freight rates from our mill to destinations in question.

Q. And do you use these books in order to determine whether you can afford to take the business?

A. Yes, sir; we use the figures for that purpose.

Q. So, it is not limited to figuring just the destination price?

A. No, sir. As a matter of fact, the Cement Institute freight rate books are used by us for services employed by us partly for a matter of economy and convenience. We are a small outfit and if we attempt to utilize the published tariffs, it would entail two or three additional clerks in our office and we find that these freight rate books give us information in concrete form and save us considerable money.

Q. Now, will you give us for the record on what date the Volunteer Company began to produce cement?

A. In June, 1928.

5230 Q. Will you give us the date when you became a member of the Institute?

A. I think it was sometime in 1930, or in late 1929.

Q. I suggest to you November 23rd; does that correspond with your memory,—1929?

A. I think that is about the date, yes, sir, as I recall now.

Q. And how long did it continue its membership in the Institute?

A. I do not remember the exact date, Mr. Leisure, but we were in there for about a year or longer.

Q. Around November 30, 1930, would you say?

A. I think that is about the date.

Q. And did the Volunteer Company subsequent to that time again become a member of the Institute?

A. Yes, sir.

Q. About when was that?

A. That was approximately two years later, as I remember—I do not remember the exact dates.

Q. Would you think around June 15, 1933, might be a correct date?

A. I think that is about right.

Q. And has it or has it not been a member ever since that time?

A. We have, yes, sir.

5231 Q. Mr. Parsons, did you have any agreement or consider your company bound to use the freight rate books, if they differed from the rate of the official tariffs?

The Witness: No, sir, we did not.

By Mr. Leisure:

Q. Did you have any other agreements or understandings with your competititors with respect to fixing prices, as charged in this complaint in any way?

The Witness: No, sir, we had no agreement with any one.

5232 Q. In Exhibit 1070-A, there is a sentence at the bottom of the page, and this exhibit, Your Honor, is a report about North Carolina bids, which sentence ends as follows: "Tried to find out today regarding allocation but have been unable to do so." Will you look at that exhibit, Mr. Witness, and refresh your recollection, and when you have done so, will you just explain to the Examiner what the use of that word "allocation" means, as used in that exhibit?

A. We bid on 400,000 barrels of cement to the North Carolina Highway Department, and after the bids were received and read, we were allocated so much business by the North Carolina Highway Department; we go in there and beg for as much allocation as we can get.

Q. And that is what the word "allocation" had reference to in that exhibit?

A. Yes, sir.

5233 By Mr. Zimmerman:

Q. Mr. Parsons, in the first examination by Mr. Wooden, he frequently used the term "base mill" and "non-base mill." Is it your understanding that a so-called non-base mill is simply a price follower, such as your company?

A. Yes, sir.

Q. And a so-called base mill then is the opposite, or a price leader?

A. Yes, sir.

Q. Now, referring to the method of pricing and selling cement,—or perhaps I should say methods that were in vogue in the Portland cement industry in 1932, and also the methods of pricing and selling Portland cement during the period since 1935 and right up to the present day, is there any difference between the two periods as to the methods of pricing and selling?

A. We utilize the same methods in making our prices as we have utilized since we began business in 1928.

Q. Do you would say there was no difference at all between those two periods?

A. No, sir.

how many years,—your personal experience?

Q. Your own history in the cement business goes back

A. Well, in the wholesale way, it dated back about

5234 22 years prior to that time.

Q. To about 1916?

A. Yes, sir.

Q. Well, being familiar with the methods of pricing and selling cement that far back, would you say that there is any difference between the methods of pricing and selling that were followed then, when you were new in the industry and those that are followed today?

A. I would think, speaking generally, there is none.

5235 Q. That is the reason I said "to that extent." I understood that, but the fact was that when you quoted that price there and assumed leadership, any of your competitors who desired to continue to sell cement in that territory were obliged to meet your price, were they not?

A. If they expected to participate in the business around there, I should think they would have to meet our price.

Q. And any of them that had established or maintained a dealer organization in that territory would be obliged in order to maintain that dealer organization to meet your price to those dealers?

A. I do not think they could sell cement in there for more money than we were offering it for sale.

Q. That is exactly what did happen. Your competitors met your prices, did they not?

5236 A. Yes, sir.

And your company did not obtain the hoped for increase in sales?

A. We did not.

By Mr. Smith:

Q. Mr. Parsons, what are the raw materials that your mill uses?

A. We use limestone and marble.

Q. Where do you get the marble?

A. On our own property.

Q. On your own property?

A. Immediately adjacent to our mill.

Q. And your marble or silica, where is your shale?

A. That is on our own property, an adjacent location to our mill.

5238 *Redirect Examination by Mr. Wooden.*

5241 Q. Now, I believe you said on cross-examination that you found these freight rate books of the Institute a matter of economy and convenience. You found them a matter of convenience, have you not, for the calculation of your destination prices?

A. We found them a convenience in ascertaining the freight rate from various points to various destinations, yes, sir.

Q. Did you find them a convenience for figuring the freight rate from base point to destination?

A. Yes, sir, it is convenient to us, Mr. Wooden. May I say, I think during the period there was a period of time we were not subscribers to the Cement Institute freight service, and they mean absolutely nothing to us except as a matter of convenience and economy.

Q. What period was that?

A. I do not remember, but there was a period of time.

Q. Was it prior to the Code?

A. I do not remember.

Q. Was it subsequent—you cannot say whether it was the last three years or prior thereto?

A. I do not recall, sir, momentarily, and as I have said before, we can do without those freight rate books but it would cost us a good deal more money.

5246 Q. Showing you Exhibit 1074-A, one of your invoices, the freight is shown on that as 13.375 cents. That is taken from the freight rate book of the Institute?

A. Mr. Wooden, I cannot answer you. I am not trying to evade you, but I do not make up the invoices and I have nothing to do with them.

Q. Don't you know enough about the way your business, in the matter of sales and invoices, is conducted to say whether or not that figure on your invoice is the published tariff figure or a freight rate Institute book figure?

The Witness: I cannot answer it. That invoice is made up seven miles from my office and I have told you everything I know about it.

By Mr. Wooden:

Q. But you know the invoice freight is the actual freight from your mill?

5247 A. The allowance of the freight on our invoice is the actual freight from our mill.

Q. What the railroads would collect?

A. Yes, sir.

Q. What they would collect from the buyer?

A. Yes, sir.

Q. On arrival of the cement?

A. Yes, sir.

5248 Examiner Norwood: I want to correct the record with regard to the reception of these exhibits this morning. It seems that a few more of them were withdrawn than I indicated. The following of the exhibits 1043-A to 5H were withdrawn; that is, JJ, VV, 3B, 3C, 3D and XX; then, 4S, 4T and 4U had previously been taken in. So, the remainder of those exhibits 1043-A to 5H, inclusive, with the exclusion of the ones I have just named, were received in evidence.

Mr. MacIntyre: EE and FF were received previously.

Examiner Norwood: Yes. That makes the reception 1043-A to H, 1043-KK to UU, 1043-WW to 4R's and 1043-4V to 5H.

(COM. EXS. 1043-A to H, 1043-KK to UU, 1043-WW to 4R, 1043-4V to 5H were offered and received in evidence.)

5249 Q. Mr. Parsons, as I understood your testimony a day or two ago, your salesmen carry these freight rate books of the Institute and use them in figuring destination prices?

A. Yes, sir.

Q. Do your salesmen carry the published freight tariffs from your mill to destination points?

A. No, sir; if they carry them, they could not read them, Mr. Wooden.

Q. Calling your attention to Exhibits 1002-A and B, being correspondence between your Mr. Roberts, your traffic manager in October, 1936, and C. H. Reigart, the manager of the Cement Bureau Freight Rate Bureau at Bethelehem and referring particularly to 1002-B, Mr. Reigart's letter to your Mr. Roberts, in answer to 1002-A, in the course of which Mr. Reigart states "As you probably understand, rate books show the lowest rate available to any given destination and are not intended for shipping purposes."

Do you agree that they are not intended for shipping purposes?

5250 The Witness: As I have said before, I am not a traffic man and I do not know and understand these things, but I do remember Mr. Roberts calling attention to something in regard to a rate in Knoxville that was some special rate—a river front rate or something that was mentioned in this memorandum—and if I may, I would like to read this paragraph, or read this entire memorandum.

Mr. Wooden: I have no objection. It is in evidence already as an exhibit.

Examiner Norwood: You can read it off the record. However, that being his answer to a question, perhaps he should read it on the record.

The Witness (reading): "Inasmuch as Knoxville rates are applicable to river front and South Knoxville extensions when shipments move into Knoxville via Southern Railway, it is respectfully submitted there is no need of carrying these extensions in the rate books. As you
5251 probably understand, the rate books show the lowest rate to any given destination and are not intended for shipping purposes, and in the circumstances, we do not carry stations located within the switching districts to which the rates, as published in the instant case for Knoxville, apply."

By Mr. Wooden:

5252 Q. In other words, the freight rate books do not show the freight from your mill at all, only from Knoxville, is that right?

A. Mr. Wooden, Knoxville,—our mill is known as Knoxville.

Q. But there is a difference of five or six cents a barrel between your mill rate into Knoxville, I believe you said.

A. We take an estimated figure of 5 or 6 cents, I do not remember, which covers the switching charge from our mill to Knoxville. In this particular instance there is some,—I cannot explain, because I do not know—but I do remember there is some extra charge for river front delivery in Knoxville.

Q. What is the name of your mill points?

A. I think it was at one time called Caswell, Tennessee, but we speak of it as Knoxville; it is sometimes referred to as John Sevier yard.

Q. And there is a difference of 5 or 6 cents a barrel to get your cement into Knoxville from your mill?

A. Let me make it clear; there is a switching charge from our mill down to Knoxville. Via the Southern it is one rate, and delivery by L. & N. it is another rate. I do not want to tell you it is the same in every instance, 6 cents or 5 cents per barrel.

Q. You approximate it.

5253 A. That is an average.

Q. Has the freight rate books of the Institute carried the rates from your mill point at any time?

A. They have carried it from Knoxville.

Q. But not from your mill point that you have named?

A. It would be the same rate, as I understand it.

Q. It is not the same rate when you ship south, would it be—when you ship south of Knoxville?

A. I would imagine so, sir.

Q. But at any rate the mill points are not listed in the freight rate books, not Knoxville?

A. Knoxville is listed.

Q. Knoxville was not in the Virginia book in 1935?

A. No, sir.

Q. Were you bidding to the State of Virginia in 1935 as you did in 1936 and 1937 to all these destination points?

A. I think we did to the State of Virginia in 1935; I am not so certain.

Q. When you made this special low price in Knoxville back in 1931, did any of the mills drop out of the Knoxville market?

A. Not to my knowledge.

Q. All that had been coming in there continued to come in?

A. So far as I recollect, yes, sir.

5272 HUGH E. WHITE, was recalled as a witness on behalf of the Commission, and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. White, I am handing you papers bound together and marked 1078 for identification. Will you state what they are?

A. Each of these sheets carries a headline showing that they are publications of the Cement Institute Freight Rate Bureau, Bethlehem, Pennsylvania, and they are corrections Nos. 1 to 73, inclusive, to Virginia freight rate book No. 4, which were delivered to us on or about November 15, by Captain McFadden, counsel for the respondents.

Mr. Wooden: I offer those documents in evidence as a supplement to Exhibit No. 1000, which is already in evidence and which is the Virginia freight rate book
5273 No. 4.

Mr. Leisure: May I ask Mr. White a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. White, this Exhibit 1078: These are merely correction sheets to the Virginia freight rate book which has already been offered?

A. I think that is what they purport to be and I assume that is what they are.

Q. You identified it, did you not?

Mr. Wooden: While he has been in custody of them, I suppose I could have avoided—

By Mr. Leisure:

Q. (Interposing) Where did you get them?

A. As I said, they were delivered to Mr. Wooden and

myself about November 15, as shown on the fly sheet or cover sheet.

Mr. Wooden: Did you make up the cover sheet yourself?

The Witness: It was made up under my direction. It carries the same caption as the rate book itself. The intention was to show they were corrections or what were tendered to us as corrections, to the Virginia rate book No. 4.

Mr. Hershberger: These are sheets, as I under-
5274 stand it, that the Cement Institute had prepared, are they not?

The Witness: As I said, they were delivered to us by Captain McFadden, which is about all that we know about them.

Mr. Hershberger: By whom?

The Witness: By Mr. James T. McFadden, counsel for the respondents.

Examiner Norwood: Any objections?

Mr. Leisure: We would like the opportunity of checking them. Subject to that, we have no objection.

By Mr. Wooden:

Q. Have you examined the correction sheets of Exhibit 1078 for the purpose of ascertaining whether any rates are shown in these correction sheets applicable to Knoxville into Virginia?

A. There are no rates shown from Knoxville as an origin point to any destination point in Virginia, either in the book, Exhibit 1000, or in the supplements thereto, Exhibit 1078.

5275 Q. And how late are those correction sheets, in point of time?

A. The last supplement is marked as issued September 22, 1937.

Q. Does each of the correction sheets bear a number as issued?

A. It did.

Q. Are there any omissions in the numbers that you have there?

A. I did not check that, Mr. Wooden.

Q. Will you do that?

A. I have looked through them rather hurriedly and I find they were numbered 1 to 73 inclusive. My initial

statement that they were numbers 1 to 73 inclusive is correct.

Q. And there are no omissions?

A. No, sir.

Mr. Wooden: That is all.

Cross-Examination by Mr. Leisure.

Q. These correction sheets that are sent out—am I correct?—may change some figures that are in the book or may add something that is not in the book? Is that the way they run?

A. I have not examined them critically, Mr. Leisure, but I assume, and they appear to be corrections in
5276 various points of origin to different destinations.

Q. You said that Knoxville was not shown there?

A. Not as an origin point.

Q. Suppose a new book were issued after the old book were issued, which did carry Knoxville: Would it be necessary to include it in the correction sheets in your opinion?

A. For what purposes?

Q. That is what I want to know. You said that Knoxville is not mentioned in the correction sheets, and Mr. Wooden stated this morning it was not in the Virginia freight book. Having that in mind, if a new book were issued, including Knoxville, would it be necessary to issue a correction sheet showing it?

A. I do not want to voice an opinion on it. I am simply stating facts in connection with these (indicating).

Q. You do not know anything about that?

A. I am just stating what these (indicating) purport to show.

(COM. EX. 1079-A to 4D was offered and received in evidence.)

5292 (COM. EX. 1080 was offered and received in evidence.)

5312 Mr. MacIntyre: I now offer in evidence 937 (000) (ppp).

937 (d) (e)
933 (7h)
933 (7i)
933 (7j)
925 (8v) (8w)

925 (4t) (4z)
925 (5a) (5c)
925 (5s) (5t)
925 (6a) (6k)
5313 870 (15h) (15i)
562 (14r)
495 (a) (b)
883 (2k) (2n)
883 (y) (2h)
883 (2i)
883 (v)
883 (r)
883 (s) (t)
883 (q)
883 (j) (o)
562 (11j) (11k)
562 (12c)-(12d)
562 (12h)-(12n)
562 (12x)-(13t)
562 (14h) (14i)
562 (14v)
562 (15b)-(15d)
562 (9o)
562 (9t)-(9x)
562 (9j)
562 (10c)
562 (10e)
562 (10d)

5315 Washington, D. C.,
Friday, April 8, 1938.

5321 Mr. MacIntyre: If Your Honor please, we offer for the record at this time Exhibit 972-B to 4-K, inclusive, except 972-2D and 972-2E, which were accepted in evidence on April 6. We may add that those exhibits contain replies to questionaire 24-C, that is of the Clark and Burns questionnaire, one of which, as has been noted, was received in evidence on April 6. We offer at this time the remaining portion of that exhibit for the record, and we ask that it be received at this time, rather than to be taken under advisement for the two or three week period, because we feel that this group of exhibits, that is
5322 the questionnaires, are in an entirely different class from that of the correspondence about which we talked yesterday. There are questionnaires and replies thereto such as were submitted by Mr. Leisure on behalf of the Cement Institute in response to the subpoenas duces tecum, that is, on March 8, 1938. The question as to the propriety of the Commission's subpoenaing them has been decided by the Commission itself. It has been determined through the admission of the three exhibits mentioned out of this group that there is some relevancy and materiality attaching to this group. In our opinion it will not be questioned by Mr. Leisure that they are the respondents' replies to the questionnaires of Professors Clark and Burns, thereby establishing an automatic identification of the exhibits in that group. We therefore ask that they be given special consideration this morning and accepted for the record.

5323 Mr. Leisure: I certainly can not make intelligent objections nor intelligently allow any of them to be received in evidence without the opportunity of looking at what is in this folder, and that will take time.

Examiner Norwood: Counsel certainly has a right to look them over first.

Mr. Leisure: The first one I pick up here is No. 307, it is not a respondent, it has handwriting on it which I will want to object to specifically; if we must take the
5324 time of the Court to do it, all right; but unless some reason is shown why we should receive them now, we

should be given time to look at them over along with the other exhibits. We think Your Honor should rule in our favor.

Examiner Norwood: Well, I do not see how I can take these in until counsel has had an opportunity to look at them.

Mr. MacIntyre: On the question raised by Mr. Leisure as to some of these questionnaires not having been submitted by respondents, again we come to the question of those who are not named as respondents having, in this instance, cooperated with the respondents in this particular activity and endeavor.

Examiner Norwood: All of that will be subject to discussion, exception and objection after they have had time to look them over.

(Discussion off the record.)

Examiner Norwood: The proffer is noted on the record and decision will be reserved as agreed on in our off-the-record discussion.

Mr. MacIntyre: I believe that clears the record that this offer will remain pending and under advisement during the continuance period.

Examiner Norwood: Yes.

5325 Mr. MacIntyre: We now offer Exhibit 973-B to 4n, inclusive, under the same conditions as 972.

Examiner Norwood: Decision reserved pending inspection by respondents' counsel.

Mr. MacIntyre: I now offer 967-A to 18o, inclusive.

Also 968-A to 18i, inclusive, and I will state that when this particular offer is completed we will state or characterize in a few words the exhibits which are now being offered.

We now offer Exhibit 969-B to 18a inclusive.

We now offer Exhibit 970-A to 16n, inclusive.

We now offer 974-B to 15r, inclusive.

We now offer Exhibit 975-B to 20l, inclusive.

Mr. Hershberger: May I say something off the record?

(Discussion off the record.)

Mr. MacIntyre: We now offer Exhibit 976-A to 15n, inclusive, excepting therefrom 10-G to 10-Q, inclusive, which were received in evidence on April 6, 1938, as shown by page 5143 of the record.

The group of exhibits which have just been offered consist of questionnaires which were sent out by Professors

Clark and Burns to cement manufacturers and their replies to those questionnaires. As I understand it,
5326 respondents' counsel is to take custody of these for study with the understanding, of course, that 972 and 973 will be loaned to Mr. White, of the Commission for the purpose of making photostats today; with the orginals to be returned tomorrow to respondents' counsel to be placed alongside the others that they have custody of for study.

5327 Mr. MacIntyre: We now offer for the record the following exhibits:

740 (d)
958 (b) and (c)
829 (t)
836 (2u)
577 (y) and (z)
836 (2x) and (2y)
836 (2v)
836 (2w)
836 (2r)
836 (2p)
836 (2n)
836 (2o)
836 (2q)
5328 836 (2m)
836 (t)
836 (2e)-(2f)
836 (2b)
836 (l)
836 (3v)
836 (3s)-(3u)
836 (2p)-(3r)
730 (h) and (i)
836 (3m) and (3n)
836 (3o)
576 (2p)
576 (2o)
553 (2z)-(3c)
553 (2y)
553 (2x)
950 (e)
950 (b)
950 (i) and (j)

950 (r)
950 (p) and (q)
821 (4x)-(4z)
821 (5a) and (5b)
950 (f) and (g)
950 (n) and (o)
5329 553 (x)-(2c)
882 (6w)
882 (6x) and (6y)
950 (h)
553 (3g)
571 (a)-(d)
821 (4w)
571 (5e) and (5f)
950 (s)-(u)
440
439 (a) and (b)
882 (6p) and (6q)
553 (3f)
571 (5c) and (5d)
937 (2f)
937 (2e)
937 (2d)
571 (t)-(2b)
937 (2c)
571 (r) and (s)
937 (ww)-(xx)
562 (10q) and (10r)
578 (6r) and (6s)
578 (6t)
553 (w)
5330 870 (15a) and (15b)
870 (15c) and (15e)
571 (11L)-(12n)
433
916 (g)-(j)
434
435
436
437
571 (9k)-(11k)
938 (y) and (z)
958 (f) and (g)
938 (2a)

553 (2n)
950 (x) and (y)
953 (e)
958 (m) and (n)
958 (j) and (l)
958 (w)
971 (b) and (c)
953 (n)
958 (u)
958 (v)
953 (p)
958 (x)
5331 958 (y)
971 (28f) and (28g)
571 (41)
971 (g) and (h)
958 (2p)
971 (i)
975 (k)
953 (w)
956 (2s) and (2t)
975 (4i)
971 (j)
571 (2y) and (2z)
953 (2r) and (2s)
971 (s)-(2r)
971 (2t)-(2x)
971 (2z)-(3a)
953 (2w)
971 (3b) and (3c)
953 (3i) and (3j)
953 (3g) and (3h)
953 (3r)
958 (2q) and (2r)
941 (s)
571 (3a) and (3b)
971 (3j)
956 (3p)
5332 956 (3q) and (3v)
879 (u)
879 (t)
879 (s)
913 (7i)
971 (4c)

971 (4h)
971 (4j)
913 (7b) and (7c)
562 (3r) to (3v)
971 (4o)
971 (4q) and (4r)
971 (4s)-(4u)
971 (4v)-(4x)
913 (6t) and (6u)
971 (5a)
971 (5c)
879 (y)
879 (x)
562 (3q)
879 (w)
817 (6g)-(6i)
971 (5d) and (5e)
879 (v)
971 (5q)
5333 966 (h) and (i)
966 (cc)
971 (5w)
971 (5x)
971 (6u) and (6v)
971 (6w)
971 (6x)
971 (6z) and (7a)
971 (7e)
971 (7f) and (7g)
971 (7-L)
971 (7m)
965 (a) and (b)
962 (c) and (d)
971 (7s) and (7t)
971 (7y)-(8a)
971 (8n)
971 (29t)-(29u)
971 (9a)-(9c)
971 (9h) and (9i)
963 (g)-(q)
971 (9-L)
971 (9m)
971 (9n)
971 (9o)

971 (9p)
971 (9q) and (9r)
971 (10e)
913 (6h)
971 (29h)
971 (31x)
971 (32b)
971 (10L)-(10n)
971 (10p) and (10q)
971 (10v)
971 (10x)-(11d)
971 (30d) and (30e)
971 (30g) and (30h)
971 (29e) and (29f)
971 (29g)
971 (11g)
971 (30i)-(30k)
971 (11L)
971 (11n) and (11o)
963 (r)
971 (11s)-(11u)
971 (11y)
971 (12c) and (12f)
971 (12g) and (12h)
971 (12i) and (12j)
5335 971 (12k) and (12m)
971 (30m)
971 (30n)
971 (13c)
971 (30p) and (30q)
971 (13d)
971 (13h)
971 (13j) and (13L)
971 (13r)
963 (z)
963 (2a) and (2b)
958 (3c) and (3e)
971 (14k) and (14L)
956 (5r)
971 (14u)-(14w)
971 (14z)
971 (15a) and (15b)
971 (15e)-(15g)
958 (3i), (3j) and (3k)

971 (31u)
956 (14y) and (14z)
971 (16a)
971 (16b) and (16c)
971 (31a)
956 (15c)-(15e)
562 (b)-(j)
5336 971 (31v) and (31w)
971 (17n) and (17o)
971 (17p) and (17q)
971 (17t) and (17u)
971 (32c)
971 (32n)-(32s)
971 (17z) and (18a)
971 (18f)
971 (18i)
971 (18m)
971 (18x)-(18z)
956 (18p)
971 (19d)
971 (19v)
971 (20k)-(20m)
971 (20v)
971 (20z)-(21b)
958 (4a)-(4i)
971 (31q)
913 (4h)-(4k)
971 (22x)
971 (22Y)
971 (22z)
971 (23a) and (23b)
958 (4o) and (4p)
5337 571 (2L)-(2n)
913 (3q) and (3r)
571 (2o)
958 (4)-(4u)
913 (3s)
913 (4a)-(4e)
971 (23f) and (23g)
971 (23i) and (23j)
971 (23n) and (23s)
971 (23t)
971 (23u) and (23v)
562 (3w) and (3x)

971 (23w)
971 (24e)-(24g)
971 (24h) and (24i)
971 (24L) and (24m)
971 (24r)
958 (5c) and (5d)
958 (4w), (4y) and (4z)
958 ((5a) and (5b)
971 (25L)
971 (25m)-(25o)
971 (25p)
971 (25q)
913 (2w)-(2y)
882 (4v)
5338 971 (25u)-(25y)
971 (26a)-(26f)
971 (26h)-(26L)
971 (25e)
971 (32u)
971 (26r)
889 (b)-(e)
958 (5f) and (5g)
913 (2s) and (2t)
887 (4s) and (4t)
958 (5j) and (5k)
958 (5L)
958 (5m)
958 (5n)
888 (2L)
971 (27a)
971 (27b)-(27c)
958 (5o)
971 (27e)
958 (5p)
971 (27g) and (27h)
971 (27k)-(27n)
913 (2L)-(2m)
913 (2d)
419 (b)
419 (h) and (i)
971 (28d)
5339 971 (28h)-(28k)
971 (28L)-(28n)
419 (a)

964 (h)
971 (28r)
971 (28o)
971 (28t)
913 (w)
913 (v)
958 (6h)
971 (28y)
971 (29a)
971 (29b)
913 (d)
971 (29d)
913 (a)
913 (2n)
971 (34p)
971 (33L)-(34o)

5340 I would like to state for the record that the group of exhibits which has just been offered may be characterterized as relating to and reflecting the activities of the Public Relations Committee of the Cement Institute; the Cement Information Bureau of the Cement Institute and certain negotiations of the Cement Institute or its representatives with the Federal Trade Commission and negotiations of the Marketing Research Committee of the Cement Institute with professors Clark and Burns.

We now offer the following group of exhibits:

797 (w)-(z)
828 (6t)-(7h)
847 (a)-(c)
846 (2p)
846 (2o)
427 (k)
427 (L)-(t)
866 (3z)
855 (5i)
877 (B)
947 (11g)
947 (11f)
947 (11m) and (11n)
855 (3n)
5341 947 (11t)
947 (13c)

The group of exhibits which have just been offered relate to and reflect the activities of the respondents, the Cement Institute, in price filing and other activities during the Code period and subsequent thereto.

I now offer the following exhibits:

799 (7p)
799 (6y)
799 (2L)

The last group of exhibits offered deal with contract checking activities in the Cement Institute and its members.

We now offer the following exhibits:

425 (d)
425 (c)
947 (10L)
947 (10m)
947 (10k)
947 (10j)
948 (d)
879 (ddd)
879 (bb)
948 (f)
5342 948 (g)
948 (h)
948 (j)
948 (i)
879 (ww) and (xx)

The group of exhibits which have just been offered for the record relate among other things to the activities of the Cement Institute and its representative members to the work of the Trade Practice Committee and the Cement Institute.

We now offer for the record the following exhibits:

417 (b)
417 (a)
417 (d)
417 (g)
417 (f)
417 (h) and (i)
417 (j) and (k)
417 (L)
417 (m)

417 (o)
417 (n)
417 (p) and (q)
417 (r) and (s)
417 (v)
5343 417 (u)
417 (t)
417 (w)-(x)
874 (hh)
874 (m)
874 (L)
874 (o)
874 (n)
874 (s) and (t)
874 (q)
874 (p)
813 (x) and (y)
947 (9L)-(9o)
417 (y)
417 (z)
417 (aa)-(dd)
417 (ff)
417 (ee)
417 (gg)
417 (hh)
571 (4w)
947 (14f)
947 (14g)
947 (14e)
947 (14y)
5344 417 (jj)
417 (ii)
947 (15e)
418 (a)-(d)
870 (13n)—(13r)
867 (u) to (y)
551 (j)-(3n)
870 (13b)-(13d)
418 (e) and (f)
418 (g)
922 (b) to (ggg)

The group of exhibits which have just been offered for the record for the most part deals with price lists which have been published by the respondents, showing special,

or to use their term, arbitrary prices at ports and certain correspondence dealing with basing point prices.

We now offer the following exhibits:

879 (ppp)

The exhibit which has just been offered, 879 (ppp) relates to information which was secured by Mr. Affleck from Mr. Charles L. Hogan, for use in connection with pending legislation.

Examiner Norwood: Of course, the record shows the identification of these papers.

5345 Mr. MacIntyre: That is as to who submitted them.

Examiner Norwood: That is going to require considerable search in the record to go back to the identification of a particular paper. Why do you not give us a list showing in the record where these various things are identified?

Mr. MacIntyre: I would be glad to show you the page of the record, the day it was submitted and the company on behalf of whom it was submitted; that I understand is in the possession of Respondent's counsel now, so I can just submit a copy.

We now offer for the record the following exhibits:

731 (12u)
731 (12t)
731 (12s)

The group of exhibits just offered for the record relate primarily to consideration given by respondents to state-owned cement plants.

We now offer for the record the following exhibits:

812 (i)
812(h)
867 (5i)
818 (m)
885 (2a)

The group of exhibits just offered relate to the activities and consideration by the respondents to im-
5346 portations of foreign cement.

We now offer for the record the following exhibits:

844 (k)
844 (l)

844 (m)
844 (n)
576 (4q)
576 (4p)
576 (s)
576 (t)
576 (r)
576 (p)
576 (q)
576 (5h)
576 (w)
576 (v)

We now offer for the record the following exhibits:

534 (j)
534 (i)
534 (h)
534 (f)
534 (b)
534 (e)
583 (b)
868 (7k)
5347 586 (4z)
586 (4L)
586 (4m)
586 (4n)

We offer for the record the following exhibits:

644 (k)
644 (h)
924 (6a)
551 (a)

The last three groups of exhibits which have just been offered also relate to activities and considerations by respondents to importations of foreign-made cement.

We now offer the following exhibits for the record:

415 (572)
415 (573)
415 (574)

The exhibits which have just been offered for the record, and which carry sub-numbers instead of sub-letters as a part of Exhibit 415, show sub-numbers in numerals rather than letters because on the day on which they

were submitted, the method of numbering them with sub-letters had not been adopted for the exhibits submitted under the subpoenas duces tecum.

5348 Mr. MacIntyre: We now offer for the record the following exhibits: 424 (d), (c), (b), (a), (i), (h), (g), (e) and (f); 549 (2b), 549 (y), 549 (2a), 896 (a) and (b); 933 (7r), 545 (4n), (4m), and (4l), 747 (d) and (e). These exhibits just offered relate to Freight Rate Bureau Activities of the Cement Institute and its members. We now offer for the record exhibit 835 (aa) to (cc)

835 (z)
734 (h)
822 (c)
947 (h) and (i)
947 (d)-(g)
947 (c)
947 (b)
947 (o)
548 (3b)
919 (n)
919 (m)
947 (9i)-(9k)
947 (s)
947 (r)
919 (L)
919 (k)
947 (9v)

5349 585 (cc)
585 (dd)
585 (ee)
831 (L)
831 (j)
831 (h) and (i)
947 (10c)
947 (10e)
820 (h)
919 (2L)
919 (2k)
919 (2j)
919 (2i)
855 (2z)
947 (13b)
947 (13a)
948 (2a) and (2b)

837 (a)-(L)
919 (3e) and (3f)
562 (7L)
562 (7k)
885 (6s)
587
885 (8e)
5350 919 (3c)
919 (3b)
885 (2q) and (2r)

The group of exhibits just offered relate primarily to land grant rates, that is to a consideration of the activities of the Cement Institute and its members relative to land grant rate information and sales of cement to the United States Government which involve the use of land grant rates.

We now offer for the record the following exhibits: 427 (g), 751 (i), 751 (j) and 751 (k).

Examiner Norwood: Proceed, gentlemen.

Mr. MacIntyre: Resuming, your Honor, we offer in evidence the following exhibits:

751 (b) and (c).
751 (d) and (e).
749 (2v)
584 (g)
584 (i)
749 (n)
749 (a)
550 (xx)
546 (q)
546 (p)
546 (o)
546 (m) and (n)
5351 546 (l)
546 (k)
750 (g)
750 (a)
576 (5t)
576 (5s)
422 (o)
422 (m) and (n)
422 (L)
422 (i), (j) and (k)
422 (g) and (h)

545 (6q)
422 (b)-(f)
546 (2i) and (2j)
933 (3c) and (3d)
933 (2s)
719 (a)
933 (m)
933 (L)
845 (n)
562 (6w)-(6y)
640 (K) and (L)
640 (a)-(j)
817 (k)
422 (a)
5352 585 (gg) and (hh)
585 (ff)
839 (4k)
817 (g) and (h)
817 (i) and (j)
585 (kk)
562 (15w)-(15x)
735 (b)
735 (a)
954 (i) and (j)
954 (k)-(m)

It should be noted in that connection that there is also offered the printed matter which appears on the back of 954 (L).

553 (6v)
935 (b)
585 (a)
806 (3e) and (3f)
800 (2u)-(2x).

5353 Mr. MacIntyre: I may state with respect to the exhibits which have just been offered that they deal with the activities as relate to and reflect the activities of the respondent Institute and its members concerning the use of land grant rates and the quotation of Government destination costs with respect to sales to the United States Government, also with respect to their activities dealing with efforts to restrict diversion of shipments of cement from the point of original consignment; also with the activities relative to the trucking of Portland cement; dis-

cussion with respect to quotations f. o. b. mills and the adoption of uniform sales contracts and uniform bids.

We now offer for the record the following Exhibit:

924 ((5r)
415 (4i)
573 (l)
812 (s)
415 (27)
415 (28)
415 (22)
574 (m) and (n)
553 (2m)
553 (2L)
500 (h)
5354 500 (g)
942 (b)
942 (c)
547 (4k)
954 (2h)
553 (5z) and (6a)
500 (b) and (c)
571 (4h)
571 (4g)
674
575 (i)
575 (g) and (h)
575 (a) and (b)
562 (16g)
562 (16f)
562 (16j)

The exhibits which have just been offered relate to and reflect the activities and the consideration of the respondent Institute and its members with respect to plans and activities on the part of private concerns in building cement manufacturing plants.

We now offer for the record the following exhibits:

549 (2e)
549 (d)
549 (e)
5355 549 (w)
549 (u)
549 (v)
549 (r)

549 (t)
549 (s)
549 (q)
823 (a)
549 (p)
734 (jj)
734 (kk)
734 (ii)
576 (6u)
576 (6v)
576 (6t)
576 (6q)-(6s)
549 (n)
549 (o)
549 (m)
877 (g)
549 (L)
549 (K)
585 (u)
585 (t)
5356 585 (q)-(s)
834 (e)
549 (2h)
549 (2g)
549 (j)
490
813 (b)
549 (i)
813 (a)
549 (c)
549 (2d)
547 (k)
547 (L)
547 (i)
547 (j)
547 (h)
549 (h)
549 (g)
549 (f)
549 (2c)
813 (c)
879 (a)
879 (b)
547 (b)

547 (a)
5357 549 (2i)
914 (D)
914 (f)
954 (u)
427 (bb) and (cc)
947 (16L)-(16p)
562 (15h)
562 (15i)
562 (15y)
914 (L)
645 (e) and (f)
645 (g)-(m)
645 (d)
645 (c)
645 (b)
645 (a)
914 (e)
813 (m)
813 (L)
549 (3g)
813 (n)
731 (6g)
549 (2f)
549 (3e)
5358 549 (3b)
549 (3c)
549 (3a)
549 (2L)
549 (2m)
549 (3p)
826 (bbb)
581 (f)
736 (a) and (b)
736 (c)
919 (d) and (e) and (b)
919 (c)
420 (ppp)
547 (g)
547 (f)
547 (2r)
547 (2q)
867 (p)
867 (o)

813 (r)
813 (q)
867 (7e)
867 (7d)
867 (7x)
731 (6f)
5359 731 (6e)
1027 (u)
1027 (t)
731 (6d)
1027 (v)
809 (11s)
809 (11r)
421
549 (4n)
731 (6b) and (6c)
737 (ww)
737 (aa)
737 (bb)
737 (cc)
819 (bb)
933 (x)
643 (b) and (c)
870 (2b)
873 (c) and (d)
873 (e) and (f)
873 (g)
473
731 (4f)
873 (m)
549 (4m)
5360 549 (4i)
809 (11u)
809 (11t)
549 (4k)
549 (4L)
886 (d)
819 (aa)
819 (x)
873 (i)
731 (2L) and (2m)
832 (g)
832 (h)
420 (4i)

584 (m)
813 (z)
832 (f)
832 (e)
879 (kk)
832 (d)
879 (kk)
832 (d)
832 (c)
872 (b)
813 (bb)
415 (373)
867 (7w)
867 (7v)
5361 549 (3z)
549 (4a)
549 (4b)
549 (4c)
549 (4d)
549 (4e)
549 (4f)
549 (4g)
822 (2a)
816 (d)
813 (ff)
813 (ee)
914 (k)
416 (rr)
549 (4t)
947 (10b)
947 (10a)
919 (2w)-(2z)
549 (4u)
546 (2o) and (2p)
914 (j)
415 (49)
914 (z)
415 (50)
914 (h)
947 (10f)
5362 947 (10h)
947 (10z)
947 (10y)
919 (2t)

546 (2L)
546 (2k)
562 (7u)
562 (7s) and (7t)
458 (a)-(c)
458 (d) and (e)
933 (7p) and (7q)
914 (n) and (o)
914 (m)
415 (39)
415 (40)
549 (5c)
549 (4y)
549 (4z)
646 (b)
867 (7c)
867 (7b)
867 (6y)
867 (7h)
867 (7i)
867 (6z) and (7a)
933 (5e)
933 (5d)
5363 877 (n)
877 (m)
877 (i) and (j)
886 (e)
731 (4v)
731 (4u)
415 (374)
736 (d)
734 (hh)
832 (b)
874 (oo)
547 (2d)
547 (2c)
547 (2m)-20)
547 (2i)
547 (z)
547 (y)
547 (x)
547 (2b)
547 (2a)
867 (7t) and (7u)

867 (7s)
547 (v)
547 (u)
547 (t)
5364 549 (6b)
415 (366)
415 (367)
415 (368)
415 (545)
886 (s) and (t)
547 (q)
547 (p)
547 (o)
549 (5x)
547 (n)

This group of exhibits deals with and reflects the activities and consideration by the Cement Institute and its members to restriction of sales and restraints upon the sales of Portland cement through dealer channels and at dealer prices.

This will constitute the bulk of all of the selections which have been made by counsel for the Commission from the documents submitted under the subpoenas duces tecum. However, there will be offered on future dates a few additional selections.

Examiner Norwood: And you are going to offer these that were withdrawn here again, that is 925 (6z) and so forth?

Mr. MacIntyre: Those that were offered yesterday it is contemplated to offer later on, that is true, also a few other selections not offered at this time, but those
5365 offers that have been made constitute practically all of the selections which have been made.

Mr. Leisure: What happens with the ones that were not offered; are they turned back?

Examiner Norwood: They will be turned back, as we have already agreed.

Mr. Leisure: Then he asks Your Honor to have them back again?

Examiner Norwood: No, they will be returned to the people who furnished them subject to their order—a great many of them have authorized me to return them to you, Mr. Leisure.

Mr. Leisure: Well, I think if they are going to be offered, Mr. MacIntyre should not hold these photostats and then offer the photostats later. They should be offered now. They were subpoenaed and he was allowed time to look them over. I am merely trying to avoid any future complication about papers.

Examiner Norwood: Yes, he offered the bulk of them and I do not see why he should not have a little time to take care of the rest of them.

5372 Examiner Norwood: Have you any further testimony to offer?

Mr. Wooden: Yes, we will have one witness this afternoon at two o'clock, but before the luncheon recess, I want to take occasion to offer in evidence Exhibits 408-A to blank and 409-A to blank inclusive.

5373 Examiner Norwood: Proceed, gentlemen.

In the record, at page 5211, in the Examiner's statement, with regard to the reception of certain exhibits; to-wit, 1043-511, in line 21, it should read "of these organizations which appear from this testimony to be cooperating with the respondents in this enterprise, circumstances, et cetera."

(Discussion off the record.)

A. H. TACKETT was thereupon recalled as a witness on behalf of the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Tackett, the record of March 9, 1938, page 3964, records your testimony, in connection with your work for the Federal Trade Commission in the investigation of the Cement industry, to the effect that you secured certain papers and documents from an attorney representing the Cowham Engineering Company during August, 1931. Do you recall that testimony?

5374 A. Yes, sir.

Q. Mr. Tackett, I now hand you papers marked for identification as Commission's Exhibits 1081-A to EE, inclusive, and ask you to state what you know about those.

(Discussion off the record.)

A. An examination of the documents you presented me and a comparison of the symbols on these documents with the records of papers which I obtained from Mr. Appel, attorney for the Cowham Engineering Company, shows that these are photostats of the documents which I obtained from Mr. Appel.

Q. During August, 1931?

A. At that time; yes, sir.

Q. And he submitted them to you as a representative of the Cowham Engineering Company?

A. Yes, sir.

Q. And represented them to be papers that had been selected from the files of the Cowham Engineering Company?

A. Yes, sir.

Q. By representatives of the Commission?

A. Yes, sir.

Mr. MacIntyre: That is all.

Examiner Norwood: Examine.

Mr. Leisure: May I have the documents, please?

Mr. MacIntyre: These are merely offered for identification. If you would care to ask the witness as to
5375 how he was able to identify them, I will be glad to have you cross-examine on that, but these papers have not been offered for the record and no objection to the papers or contents can be raised at this time.

(Discussion off the record.)

Mr. Schofield: I have no questions.

Mr. MacIntyre: Mr. Leisure?

Mr. Leisure: I cannot question without the documents. When they are offered, I will state my objection, if I have an objection.

ALEX McCLURE ASHLEY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am the Chief of the Division of Purchases, Sales
5376 and Traffic in the United States Department of Agriculture and have been in that position continually since 1925. Prior to that time I had only incidental con-

nections with the purchase of materials for the Department as one of the general physical officers of the Department. As to the variety of commodities which we purchase for the Department, I might say that we purchase everything for the Department that is purchasable, airplanes, hypodermic syringes, almost every item of supply in between, and other building materials consisting of cement reinforcing rods, structural steel, lumber of all sorts and coal.

5376 Q. Will you explain briefly just how you go about
5377 making purchases of cement?

A. The using bureau comes to our office and requests us to issue proposals for cement, indicating the quantities and deliveries desired, and all of the incidental information that is necessary for the sending out of requests for proposals and the opening of the proposals received and the making of the awards. At times, the awards that are made in our division are made not on requests or proposals that we have sent out, but on the basis of field solicitation or bids, which, after opening, are sent into us for examination as to the competency of the competition and so on, and the awards are made by us. We have those two classes of cases.

Q. Is the procedure you have described,—is that required by law?

A. Well, required by law and the decisions of the Comptroller General of the United States, based on the law.

Q. What is the purpose you are seeking to accomplish in inviting proposals in the way you have described?

5378 The Witness: To develop proposals under which I will be able to make an award to the lowest responsible bidder offering material in accordance with the specifications.

By Mr. Wooden:

Q. Will you give us some approximation of the amount of cement you buy in an average year?

A. I can give you one figure approximately for the fiscal year 1937. I can give this figure merely because we had occasion to assemble the data upon which the figure was based recently, and it is still in my mind. During the fiscal year 1937, that is the year ending June 30,
5379 1937, the Department of Agriculture purchased almost 220,000 barrels of cement.

5380 Q. Do you buy in all sections of the country or are the purchases pretty well concentrated in certain sections?

A. We make awards for cement to be delivered in all sections of the country.

Q. What is the range in the quantity that you buy at any given time?

A. From very small quantities up to a number of carloads depending on the project where the material will be used.

Q. Do you buy cement from manufacturers only or do you buy from dealers also?

A. We try to make our competition as broad as possible always and where it is possible we send requests for proposals to dealers as well as to manufacturers.

Q. Have you bought directly from manufacturers as a general rule?

A. Quite frequently.

Q. Has that been true during your entire service period?

A. Yes.

5381 Q. Showing you, Mr. Ashley, the paper marked 1082-A and B for identification, will you state what it is?

A. 1082-A and 1082-B together constitute an abstract of proposals which were opened August 27, 1935, at 10 o'clock a. m., in the Soil Conservation Service Regional Office at Athens, Georgia.

Q. How many barrels were involved?

A. 750 barrels.

Q. And how many bidders?

A. Seven bidders.

Q. Were their bids all the same as to price?

Examiner Norwood: Has that exhibit been offered in evidence?

Mr. Wooden: No, Your Honor, it has not. I should have offered this for the record before asking questions. I offer this abstract in evidence.

Mr. Leisure: May I ask a question off the record?

Examiner Norwood: Certainly.

(Discussion off the record.)

Examiner Norwood: There is no objection, is there?

Mr. Wooden: Well, I would like to withdraw 1082-A, because it is a duplicate of 1082-B, and offer 1082-B without any letter, just make it 1082.

Examiner Norwood: Just change the identifica-
5382 tion to 1082.

Mr. Wooden: I make the offer of 1082.

Mr. Leisure: Subject to checking with these bids we have no objection.

(COM. EX. 1082 was offered and received in evidence.)

Q. You said, I believe, there were seven bidders; were the bids in that case all the same?

A. The prices are identical.

Q. And in what amount,—I mean in gross amount as well as per barrel?

A. These prices are all Villa Rica, Georgia; the bid in each instance is $1792.50, with a discount of 10 cents per barrel, 15 days.

Q. Will you state who got the award in that last bid?

A. I will have to see the bid file for that. (Witness refers to the file.) The award in that case was made to Pennsylvania-Dixie Cement Corporation, Atlanta, Georgia.

Q. How do you make awards in case of tie bids?

A. Where there is no difference in the products offered by the several bidders, bidding in equal amounts, the award is made by lot, which is the case in cement always.

5383 Q. You say, Mr. Ashley; that in the case of cement, the bids are always such as to require the making of the award by lot?

A. No, I think you have misunderstood, perhaps. Perhaps my answer was not clear. What I attempted to
5384 say there was that where equal bids are received on cement, the award is always made by lot because, in cement bids, there is no difference in the quality of the product offered by the several bidders, so far as we know. We resort to lot—if I may say this off the record—

Examiner Norwood: No; it is on the record.

The Witness: We resort to award by lot only when some better reason for the award cannot be found. The Comptroller General expects us to examine all offerings no matter what the commodity or the item that is being purchased may be, and take that bid from two or more equal bids which represents the best value to the Government.

By Mr. Wooden:

Q. Do you find that the bids on cement are of an identical character in a great majority of the instances?

A. In the great majority of the cases, bidding on cement develops equal prices; namely, there are equal offers from several bidders.

Q. Do you ask for bids on cement f. o. b. mills or on a delivered basis?

A. We ask for bids both at destination and f. o. b. factory.

Q. Do you get bids f. o. b. factory?

A. As a rule, not.

Q. Do you get any, in lieu thereof, of what is
5385 sometimes called a Government destination cost bid?

A. We do.

Q. Are such bids accompanied by a clause providing that the invoice price at the mill shall be calculated by deducting either the land grant rate or the commercial or special rate, whichever is lowest?

A. May I read, in answer to that question, the exact wording that we get at times?

Q. All right.

A. "The U. S. Government shall determine its contract price f. o. b. car at (blank) price on shipments moving on U. S. Government bills of lading to the above-named destination only by subtracting from the above-mentioned destination cost to the U. S. Government, the land grant rate as determined by the U. S. Government as being applicable from (blank) place to said destination or the actual commercial rate or special U. S. Government rate applicable from (blank) place to said destination, whichever rate is the lowest."

Q. How long have you been having such clauses included in the bids received?

A. I cannot answer that question exactly as to the length of time. I can say, however, with certainty for a year or more.

Q. What effect does that clause have upon your ability to take advantage of the Government land grant rates?

5386 A. We may or may not get the full benefit of the land grant rate in the transaction.

Q. For what reason?

A. For the reason that we cannot differentiate between the different bids received in making the award by lot. We could not say whether we are getting the full benefit of the Government rate or not.

5387 Q. Do you have to estimate the rate in order to make the deduction that is called for in the clause?

A. I do not believe I understand that question.

Q. I say do you have to estimate it as distinguished from knowing exactly what the rate is in advance?

A. We do not need to know the rate at all in a case of that sort, or the rates rather; we do not need to know the rates involved for the reason all prices reduce to the same figure.

Q. In other words, it comes back to Government destination cost, no matter what the rate is?

A. What we take off of that in paying the contractor, we have to pay out on the bill of lading on which we ship the material, and it comes back to the same figure in any event.

Q. And vice versa it would be the same?

A. Yes.

Q. You spoke something a moment ago about the quality of cement being standardized; did you make tests of the cement you buy to check on them?

A. Cement is bought on a Federal specification, and quite frequently it is bought from bins were inspection has already been made and the material sealed in the bin.

Q. Do you know whether or not some of the cement you get from one mill may have or does have any superior qualifications to that which you get from another?

5388 A. So far as I know I would say that the cement was of equal quality.

Q. Have you ever checked to ascertain whether the specifications called for a minimum standard of quality and that there is a possibility of some cement being better than that minimum standard?

A. I have never had such a check made.

Q. What is the paper I show you marked 1083 for identification?

A. This is an abstract of bids opened at the Regional Office of our Soil Conservation Service at Spartansburg, South Carolina, on October 7, 19[illegible]3.

Q. How many barrels involved?

A. May I have the rest of that file? (Papers were handed to the witness.) 3,432 barrels.

Q. How many bidders?

A. Nine bidders.

Mr. Wooden: I offer the exhibit in evidence with the supporting papers, for the purpose of checking.

Examiner Norwood: Is there any objection to that exhibit?

Mr. Leisure: No objection.

(COM. EX. 1083 was received in evidence.)

5389 By Mr. Wooden:

Q. Will you state who got the award on Exhibit 1083 and by what method the award was made?

A. The award was made to the Lone Star Cement Corporation, Birmingham, Alabama; the award was made by lot.

5394 Q. Did the bids submitted on Exhibit 1083 call for delivery at a number of destinations?

A. They did; the specifications did.

Q. Did some of them,—some of the destinations involve the use of land grant rates?

I will withdraw that question.

What were the bids of the various bidders as a destination cost to the Government at Epes, Alabama?

A. The destination cost bid was uniformly per barrel $2.14396.

5395 The witness identified Com. Exs. 1084 A and B, 1085 A, B, and C, 1086, 1087 A and B, 1088, 1089, 1090, 5396 1091, 1092, 1093, 1094, 1095 and 1096 A, B, and C, as abstracts from the files of his department showing the bids and bidders on various purchases of cement. All of the original bids are attached to the abstract except the bid of the contractor or the accepted bidder, the original in that case, of course, went to the General Accounting Office.

Mr. Wooden: I offer for the record all of these abstracts identified by the witness and tender the supporting papers for checking purposes.

(COM. EX. 1084-A and B; 1085-A, B and C; 1086, 1087-A and B, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095 and 1096-A and B and C were received in evidence.)

Q. Based on your experience as purchasing agent in the handling of these cement bids, are they, in your opinion, competitive or non-competitive bids?

Mr. Leisure: I made an objection to that.

Examiner Norwood: Objection sustained.

Mr. Leisure: It is purely a conclusion.

Cross-Examination by Mr. Leisure.

Q. Mr. Ashley, you said during 1937, the Department of Agriculture bought about two million barrels?

A. 219,000.

Q. 219,000 barrels of cement?

A. Yes, sir.

Q. I think you said you used the figure because you recently compiled it?

A. Yes, sir.

Q. What were the circumstances under which you did that?

A. Is it necessary that I answer that question, your Honor?

Examiner Norwood: Answer the question.

The Witness: Upon the request of another arm of the Federal Government.

By Mr. Leisure:

Q. That arm was what, Mr. Ashley?

A. The Procurement Division of the Treasury Department.

Q. And had you had any contact with the Federal Trade Commission before doing that work?

A. Regarding what?

Q. Regarding the undertaking that you were then setting upon.

A. No, this was compiled for the Procurement Division of the Treasury Department, as I have stated, an independent request, so far as I know.

Q. Fifteen cases were presented here representing the cement bids; are these all of the cement bids with which you have dealt throughout your service in the Department of Agriculture, Mr. Ashley?

A. No, sir.

Q. It is a selection that was made of certain bids; is that right—these fifteen were selected?

A. By me do you mean?

Q. Well, they were selected?

A. Well, as far as I am able to answer that question, I would say yes, they were selected.

Q. Yes; at whose instance?

A. I did not select them.

Q. At whose instance were they selected?

A. I cannot say who selected those cases. They were presented to me today from a much larger group of cases which I had submitted to the Federal Trade Commission previously.

Q. You submitted a large group of similar, or at least, you submitted a large group of these bids and this is a selected group?

A. I take it those are selected from the larger group which I submitted to the Federal Trade Commission.

5406 Q. Now, when you submitted the larger number, did that include any in which the bids were not identical?

Mr. Wooden: I would say that some of these that are submitted are not identical.

The Witness: My recollection is that the entire group was a group that involved more or less identical bids, but not necessarily all bids in each case being identical.

5407 Q. Now, in that Exhibit 1082, does the tabulation show anything about the terms and conditions of sale? I think you said the prices were the same.

A. The tabulation shows identical prices for all seven of the bids involved, the same discounts.

Q. Just as to the terms of sale: Did not Lehigh agree to give you the benefit of any lower destination price on the date of shipment?

A. I will have to see the bids on that. (After examining bids:) The Lehigh bid carried with it this stipulation, inserted by the bidder:

"All shipments made in consequence of this quotation will be at our current destination price on the date of shipment, if this price is below the destination price hereby quoted."

Q. Is that guarantee against price decline of any benefit to the Government?

A. That would be a benefit to the Government.

Q. Look at the other one there. Did not Universal Atlas agree to eliminate the provision as to adding

5408 any State or Federal tax?

A. A letter accompanied the bid of the Universal Atlas Cement Company which said:

"The Government, at its option may eliminate from proposal the paragraph on sheet 2"—that is this paragraph which I will read in a moment—"which has reference to Federal tax. By this we mean the amount of any Federal tax which is now applicable or may become ap-

plicable under conditions described in said paragraph need not be added to the prices named in our proposal, as said prices include such tax."

Q. While you have Universal Atlas there, it also struck out the paragraph as to the modifying of the bid as to new legislation as to hours of labor or ages of employees, did it not?

A. The paragraph in the specification material which was submitted to the bidders—in that, the Universal Atlas Cement Company struck out the paragraph which read: "Bids are requested on the basis that if subsequent legislation shall require observance of minimum wages and-or maximum hours of employment and-or limitation as to age of employees in the performance of Government contracts, any contract entered into shall be subject to modification to accord with such statutory requirements to the extent authorized or required by law."

5409 Q. Precisely. Now, without taking any further time, none of the other five companies did that as to either of these provisions that Universal Atlas put in?

A. The paragraph which I have just read was not eliminated by the Southern States Portland Cement Company, the National Cement Company, the Signal Mountain Portland Cement Company or the Lehigh Portland Cement Company.

Q. Now, is it or is it not a fact, Mr. Ashley, that these are typical examples of the differences in terms and conditions which you frequently receive?

A. It is a fact that we have received, in connection with all of our proposals, slight variations made in the terms of bids by the various competitors or bidders.

5411 *Redirect Examination by Mr. Wooden.*

5416 Q. What were you asked to do by representatives of the Federal Trade Commission in producing these bids and abstracts?

A. Well, as I recall, I was asked whether we had numerous instances of equal bidding in connection with cement purchases and I indicated that we did and from that developed the offer of a number of cases to support my statement.

AA-1 Before:

Commissioners Garland F. Ferguson, Chairman; Edwin L. Davis and Robert E. Freer.

AA-2 Chairman Ferguson: You may proceed, Mr. Wooden.

Mr. Wooden: This is an argument on a motion to overrule the Trial Examiner in admitting certain exhibits and I assume that the first argument will be made by my colleague, Mr. Leisure.

Chairman Ferguson: You may proceed, Mr. Leisure. How much time will you require?

Mr. Leisure: I think I can finish in half an hour.

Mr. Wooden: I think we can get through in that time, too.

Chairman Ferguson: We will allow half an hour to each side.

Mr. Leisure: Honorable Commissioners: This matter comes up on a motion made by the respondents asking for a review of a ruling of the Examiner on the admission of certain exhibits. The exhibits in question are 1043-A to 1043-5H.

The general subject matter covered by these exhibits is the topic of trucking.

AA-6 Now, your Honors, with few exceptions, this entire group of 104 pages may be grouped under four general headings, namely,—the activities of the railroad associations and their groups, the activities of the individual railroads, the activities of the dealer and builder supply association and their groups, and the activities of the individual dealers themselves. Of the entire 104 exhibits that have been offered, only 8 of them even purport to have been written or to have come from any of the respondents in this case.

The exhibit record has already become so unbelievably long in this case, 5,000 exhibits have already been received in evidence, 5,000 exhibits are now pending, they have been offered and are pending being received in evidence, and 35,000 have been marked for identification.

Chairman Ferguson: How many?

AA-7 Mr. Leisure: 35,000. So that it has seemed timely to come before this Commission at this time, for the benefit of the Examiner, for the benefit of the Commission

itself which must subsequently rule upon these exhibits, and for the benefit of the respondents, and for the benefit of the court in the end. It has seemed to us proper to come at this time on this group of exhibits which has been offered, in order that we may have some compass, some guide in the future as to the exhibits which are in the offing in this case.

5420 Washington, D. C.,
Tuesday, April 26, 1938.

5430 Mr. Wooden: He is looking at copies of them now, I understand. Before we leave the general subject now, I wish to offer one page that was omitted from the previous offer, which is Exhibit 971-24V for identification, a letter from Professor Burns to Blaine Smith, March 16, 1936. I am offering a paper that was produced under the subpoena duces tecum.

5431 ALEX McC. ASHLEY, was called as a witness by the Commission and, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Wooden (Resumed).

Q. Mr. Ashley, when you were on the stand, I asked you if you would undertake to ascertain from the records of your department, the number of cases during the last three years in which you received non-identical bids on cement; have you done that?

A. I have.

Q. Will you state the result of your inquiry in that
5432 respect?

A. During the calendar year 1935, 41 awards were made in cases where no equal bids were received.

During the calendar year 1936, 73—

Mr. Zimmerman: (Interposing.) May I interrupt the witness a moment? I understand the question to call for a list of non-identical bids. The list that the witness seems to be reading from is a list of awards, which would, of course, not include all the bids.

Mr. Wooden: Well, they were cases, as I understand it, involving non-identical bids where the award was made.

Mr. Zimmerman: Well, we would have to find out how many bids were made under each award would we not, in order to achieve the total result?

Mr. Wooden: Yes, we will ascertain that.

Mr. Zimmerman: Thank you.

Mr. Wooden: Go ahead.

The Witness: During the calendar year 1937, 59 cases.

By Mr. Wooden:

Q. Now, as to those cases of non-identical bids, how many of them were from dealers and how many were from manufacturers?

A. In all but three of the cases showing no equal
5433 bids, no bids other than those from dealers were received.

Q. Now, as to those three cases, will you state what the facts were regarding the bids of manufacturers?

A. In these three cases, only one manufacturer's bid was received in each of two of the instances, and only two manufacturers' bids in the other.

Q. Will you specify the year?

A. One of the cases occurred in 1935; one in 1937, and the instance in which two manufacturers bid in 1936.

Q. Now, did you also ascertain the number of cases in each of those three years where there were two or more equal bids?

A. I did.

Q. What was the result of your inquiry in that respect?

A. 54 cases in 1935; 84 in 1936 and 39 in 1937.

Mr. Hershberger: Do you mean by that the awards made?

The Witness: These are awards, yes.

By Mr. Wooden:

Q. Now, will you state to what extent dealers and manufacturers both participated in those bids?

A. Well, I have quite a various record in that respect.

5434 Q. For instance, among those bids where two or more were equal, did you find dealers bidding along with the manufacturers?

A. To some slight extent.

Q. Do you have records there which will show the number of bidders in each of those cases where there were

two or more equal bids and whether or not they were manufacturers, and how many of them were identical?

A. I have a record here of an analysis of our bid files in which I show the number of bidders in a particular transaction, the number of manufacturers bidding in that connection and the number of equal bids received.

Q. Will you state what your records show in that connection?

A. In general or in particular?

Q. Give us some details.

A. During the calendar year 1935 I have a number of cases in which no manufacturers bid, in which a relatively small number of bids was received from dealers, and in which, necessarily of course, a relatively small number of equal bids were received. The bids were quite generally, equal, however,—speaking generally. Following that, in the same year 1935 is the record of a number of bids in which the manufacturers bid, and in those cases,—in each of those cases,—the number of bids received is definitely larger; the number of manufacturers bid-
5435 ding is usually the number of bids received, and the number of equal bids is rather close to the same number as the number of bids received.

Q. Will you state from your records what the number of bidders among manufacturers were on the various cases during that year, the number of people bidding, and the number of equal bids?

A. In our transaction 1810-F, which covered 750 barrels of cement for Buena Vista, Georgia, seven bids were received, all from manufacturers, all equal.

Transaction 1812-F, 750 barrels for Sparta, Georgia, seven bids were received, seven from manufacturers, seven equal.

1815-F—I do not know whether you are interested in the quantities and the delivery points; if you are, I will read them.

Q. Just as you gave it on the other occasion.

A. All right.

In our Transaction 1815-F, covering 750 barrels for Monticello, Georgia, seven bids, seven manufacturers bidding, five of them being equal and two others being equal. That is, that is split five and two.

Examiner Norwood: Were the two others higher or lower than the five?

The Witness: I can not say from the record here, Your Honor, I do not have the complete file here, 5436 but it would be a different price in any event.

By Mr. Wooden:

Q. Go ahead.

A. Transaction 1816-F, 750 barrels for Lumpkin, Georgia; the number of bidders, seven; the number of manufacturers bidding, seven; the number of equal bids, seven.

Transaction 1818-F, 750 barrels for Buford, Georgia,—these are awards,—the fact that the transaction numbers run in sequence would indicate rather definitely that a number of them were included under one advertisement and separate awards made for the separate points.

Transaction 1818-F, 750 barrels for Buford, Georgia; seven bids received from seven manufacturers; seven bids equal.

Transaction 1819-F, 750 barrels for Cassville, Georgia; seven, seven, seven, again.

Transaction 1820-F, 750 barrels for Musella, Georgia; number of bidders, seven; number of manufacturers bidding, seven; number of equal bids, seven.

Mr. Zimmerman: Do you have the dates of those?

The Witness: No, I do not, but I can produce them.

Mr. Leisure: You have the year, do you not?

The Witness: These are following sequence in the year 1935, and I am reading all of the transactions of that year in which manufacturers bid.

5437 Mr. Hershberger: Well, that is qualified by the statement "in which there was an award," is it not; in other words, did you not get bids at times where there were no awards made? Are you reading those also?

The Witness: No, I am reading all awards—all of these numbers represent awards.

Mr. Hershberger: Is it not true that there are bids at times where there are no awards made?

The Witness: Occasionally, yes; not very frequently, of course.

Mr. Wooden: All right, Mr. Ashley, go ahead.

The Witness: The next transaction, 2069-F, the number of bidders in that case was 6; five manufacturers bidding; there were six equal bids.

Transaction 2128-F, 180 barrels, Gainesville, Georgia; number of bidders, six; number of manufacturers, six; number of equal bids, six.

2129-F, 180 barrels for La Grange, Georgia; the figures there are six, six, six.

Transaction 2193-F, for 7,920 barrels at various points in Alabama, the numbers are seven, seven, seven.

By Mr. Wooden:

Q. How many points in Alabama were there?

A. I do not have that record, various points; that is a rather large procurement.

5438 Q. Do the figures seven, seven, seven, apply to each point?

A. The number of bidders were seven, the number of manufacturers bidding were seven, and the number of equal bids seven. That would apply all the way through.

Q. For each point of delivery?

A. Yes, otherwise the record would have been elaborated here.

2194-F, that is for 2,376 barrels, various points in Alabama, these two cases probably are connected and two different awards made, presumably by lot; the figures there again were seven, seven, seven.

Q. For each point of delivery?

A. For each point, which in the aggregate made up the 2,376 barrels.

Transaction 2427-F, 137.5 barrels for Clarksville, Tennessee, the figures are nine, nine, nine.

2428-F, 2,950 barrels for various points in Mississippi, the figures are nine, nine, nine.

Q. Is that also for delivery at each point?

A. That would be for all points, the figures would be equal.

2532-F, I do not have the quantity here, it was a quantity for Meridian, Mississippi; number of bidders, five; number of manufacturers bidding, five; and the number of equal bids, five.

I have cases 2195-F; 2196-F; 2197-F; 2198-F; 5439 2199-F; 2200-F and 2201. In those cases the cement went to various points in South Carolina in lots of from 250 to 700 barrels; eleven bidders bidding in each of the cases; eleven of these bidders were manufacturers and eleven equal bids in each case.

Q. Is that also for each point of delivery?

A. That would be,—they evidently bid all the way through for each point and we made the awards by lot in the different transactions. That is for 1935.

Q. Now, will you give us the figures on the same subject for 1936?

A. I am giving the cases still only where manufacturers' bids are involved.

Q. All right.

A. I am omitting those in which no manufacturers bid. 2719-F, 800 barrels, points in North Carolina; eight bidders, four manufacturers, four equal bids.

2723-F, 225 barrels, Stillwater, Oklahoma. In that case—that case would not apply here because there were no manufacturers bidding in that particular case:

Q. Referring to the previous case, were the four equal bids of manufacturers or others?

A. I do not have that record here.

2988-F, 200 barrels for Chatham, Virginia; number of bidders, eight; number of manufacturers bidding, 5440 six; number of equal bids, five.

Q. You do not know whether those five are all manufacturers?

A. I can not say from the record here but could ascertain, of course, from our detailed records.

2989-F—2990-F, 137.5 barrels for West Point, Mississippi, and the same quantity for Meridian, Mississippi. In both cases, six bidders four manufacturers, and four equal bids.

3216-F, 132 barrels for Ellaville, Georgia; number of bidders, ten; number of manufacturers bidding, nine; number of equal bids, ten.

3217-F, 463½ barrels for Buena Vista, Georgia, ten bidders, nine manufacturers, ten equal bids.

3273, 225 barrels for Greer, South Carolina; eight bidders, eight manufacturers, seven equal bids.

3201-F, that carried a quantity for Charlotte, North Carolina, 200 barrels, and another quantity, 200 barrels, for Franklinton, North Carolina. For Charlotte we have the figures, 10, 10, 10. For Franklinton, the figures, 11, 10, 10.

3332-F, 137.5 barrels for Port Gibson, Mississippi, the figures are seven, six, five.

3334, 137.5 barrels for Canton, Mississippi, the figures are six, six, six.

3885-F, that transaction number, an award was
5441 made for 132.5 barrels for Greenville, Tennessee; the figures were four, four, four; 132.5 barrels for Jack-

son, Tennessee, the figures were seven, four, three and four; that is, the three and four meaning three equal bids and four equal bids at another price. The third portion of that transaction, 132.5 barrels for Clarksville, Tennessee, the figures were four, four, four.

3567-F, 200 barrels for High Point, North Carolina, the figures are eleven, ten and ten.

3568-F, part of the same transaction, I think, 600 barrels for High Point, the figures are eleven, ten and ten.

Then I have 3611-F,—no, I will withdraw that; that is one in which no manufacturers bid.

3702-F, 264 barrels for Dadeville, Alabama, the figures are eleven, nine and nine.

3801-F, delivery of 128 barrels to Greenville, Tennessee, and 128 to Clarksville, Tennessee; the figures in both cases were thirteen, twelve and twelve.

3828-F, 350 barrels for Placerville, California; seven bids received, four from manufacturers and there were four equal bids.

Q. Your record before you does not show—

A. (Interposing.) Does not disclose whether those were all manufacturers' bids or partly dealer and partly manufacturer.

3848-F, 200 barrels for Franklinton, North Caro-
5442 lina, the figures are eight, eight and eight.

3854-F, 250 barrels for Paducah, Kentucky, the figures are fourteen, twelve, four and eight—meaning by four and eight there were four equal bids.

Q. Four equal bids?

A. Four at one price and eight at another price.

3879-F, 640 barrels for various points in Tennessee. There were fourteen bidders in that case, fourteen manufacturers, and the prices equal bids were two and twelve; twelve alike and two some other figure.

3885-F, 128 barrels for Spartanburg, South Carolina, the figures are six, six and six.

3890-F, 120 barrels for Shelbyville, Kentucky, the figures are ten, ten and ten.

5443 3891-F, 1,000 barrels for Coshocton, Ohio, the figures are 15, 13 and 13.

3894-F, 500 barrels for Mayfield, Kentucky, the figures are 11, 11, and 10.

3896-F, 200 barrels for Lexington, North Carolina, the figures are 14, 13, and 13.

3897-F, 250 barrels for Paducah, Kentucky, the figures are 10, 10, and 10.

3949-F, 150 barrels for Brookeville, Florida, the figures are 5, 4, and 4.

4098, 150 barrels for Elk City, Oklahoma, the figures there were 6, 3 and 2.

Examiner Norwood: How many more of those have you?

The Witness: I have practically finished the year 1936. I have only one entry in my record for 1937.

Examiner Norwood: All right, go ahead.

The Witness: 4100, 539 barrels for Pedregal, Panama, the figures there were 7, 6, and 5.

4654-F, 500 barrels, Vacaville, California, 6, 4, and 4.

4705 carried 437½ barrels for Greenville, South Carolina; the same amount for Statesville, North Carolina, and the same amount for Dadeville, Alabama. In the first case, the Greenville case, the figures were 11, 10, and 10.

5444 In the Statesville case, 12, 12, and 12, and in the Dadeville case, 5, 9, and 8.

Transaction 4785 for Puerto Barrios, Guatemala, the figures are 5, 5 and 4. The quantity in that case I think was 475 barrels.

Now, I have a number of cases which are in the hands of the Federal Trade Commission and I do not have the complete evidence for those, but I have the number of equal bids merely in that case.

By Mr. Wooden:

Q. Do you have the figures for 1937, Mr. Ashley?

A. I have the figures now for 1937:

Case 530-F for 150 barrels for Brookeville, Florida, the figures are 7, 7, and 7.

Those are the only cases I have in which manufacturers bid with the exception of a number of cases in which we have incomplete information, because the cases are in the hands of the Federal Trade Commission.

Mr. Wooden: Your Honor, in tendering the witness for cross examination, I would like to say that I have had him come back and give this testimony this morning, because of some question having been raised when he was here before, whether the cases he had produced, and which were offered in evidence, were typical and representative of the experience of the Department.

Examiner Norwood: Yes. Cross examine.

5445 *Cross-Examination by Mr. Leisure.*

5446 Q. Now, you described certain bids as being equal; we have ordinarily been referring to them here as identical. Did you mean when you said they were equal, that the prices were identical in those cases?

A. The prices were identical in all cases where we spoke of an equal bid.

Q. That is, you were not going beyond prices, as to other things contained in the bids, you were merely referring to the price as being identical with the other prices?

A. Yes, sir.

Q. Now, is it not a fact, Mr. Ashley, in all of those cases where awards were made, that in practically all instances, the prices which were bid on which awards were made were the prevailing market prices at that place and time?

A. I would have no way of knowing that those were the prevailing quotations.

5447 Q. Well, you cannot give us any instance where an award was made at a price that was higher than the prevailing price in the community, can you?

A. We would not know the prevailing price in the community.

Q. Well, whether you knew it or not, you do not have much doubt, have you, Mr. Ashley, that the price at which you made the award was not higher than the prevailing market price at that place?

A. I have no information as to what might be described as the prevailing market price. All we have before us when an award is made are certain tenders made by bidders. We hope to develop the best possible price,—the best available price. Our whole bid procedure is based on that theory, of course.

Q. And you would expect, would you not, that the market price would be bid; you would not expect the bidder to submit to you a price higher than the market price?

A. I might say I would expect to develop a competitive price, if that would mean anything.

Q. Now, would you expect that competitive price which you have described to be higher than the market price? You would expect it to be the general market price in that community, would you not?

A. Ordinarily in bids to the Government we expect a better price than is obtained generally in the community.

Q. Then you expect to get prices on a cost-plus basis?

5448 A. No, we expect to get recognition, as a large and continual buyer, to get a better price.

5450 By Mr. Zimmerman:

5452 Q. Quite. Now, when you make an award at the factory price, is that to the lowest bidder or to the lowest destination cost?

A. Lowest destination cost to the Government taking into account what it will cost the Government to move the material from the factory to its point of use or destination.

Q. Then the award, in such case, is not always made to the lowest bidder, is it?

A. We think it is.

Q. I am not asking you what you think. Let us find out the facts. Is it or is it not made to the—

5453 A. The award is made to that bidder where the total price to the Government to get the material or whatnot, to the point of use is least.

Q. And that is the price? The price as made at the destination—

A. No, that is the ultimate cost to the Government. It is not the price.

Q. Do you make the award on the basis of price or on the basis of cost?

A. We make our award on the basis of the ultimate cost to the Government.

Q. Now show me, if you can, by example how that would work in the making of the award to the lowest bidder?

A. You mean the lowest bidder as to price?

Q. Is that the lowest bid or is it not? Has price anything to do with what is the lowest bid?

A. The cost to the Government is the determining factor entirely.

Q. Then, does it follow from that that where you take a bid on the basis of factory or shipping point, that you make the award in every instance to the lowest bidders, considering, now, that the bid is made at the shipping point?

A. A bid might be made at a shipping point and be accepted. It may be made at a use point.

Q. We are talking about those that are made on
5454 the basis of bids at the shipping point. Let us confine ourselves to that.

A. All right. We make an award in this way, in order to get the record straight: If we accept that bid at a factory price our record will show that that factory price, plus what it will cost us for transportation to the use point is a smaller figure than any quotation we have received at the use point or any figure calculated in that way, from any other bidder at the shipping point.

Q. Let us confine ourselves now to bids that are made f. o. b. shipping point. Now, what I want to know is this, in plain language: In those cases, do you make the award to the lowest bidder? Leave out all consideration of what it costs to get it from the shipping point to the point of destination, for the moment.

A. You are asking me to leave out a factor which is of prime importance in the determination of an award.

Q. It is a factor that is not included in the bid, is it not?

A. You mean on the part of the bidder?

Q. Exactly.

A. It is not included in bids quoting a factory price, no.

Q. If you make an award on a bid and the bid does not include the element of what it costs the Government to get it from the shipping point to the point of use, are
5455 you or are you not making an award to the lowest bidder?

A. I think I can answer that question by saying that we accept the best offer from the Government's standpoint.

Q. That does not answer my question.

A. No, because I think your question is unintelligible to a procurement officer.

Q. I do not want to make any remarks about the intelligence of procurement officers. I will leave that to you.

A. You are at perfect liberty to do so, though.

Q. That is not my purpose. What I am trying to find out is this, and I would like to get an answer to it if I can: I want to know where you have bids that are made on what you call factory price or what I call f. o. b. shipping point bids—do you, in that instance, make awards to the lowest bidder taking into consideration only that which is included in the bid and no other element?

The Witness: May I answer by describing the bid procedure in a typical case?

5456 Mr. Zimmerman: If you do that, and we do not go where we want to, we will try another way.

By Examiner Norwood:

Q. Do you make the award to the lowest f. o. b. mill bid in all cases?

The Witness: I can answer that. The answer, of course, must be not necessarily, because the freight rate or the freight charge may be different.

By Mr. Zimmerman:

Q. There is no freight rate or freight charge included in the bid, is there?

A. No, not in the bid.

Q. Then, let us confine ourselves to what is in the bid. Now, please give me a definite answer as to whether or not you do, in such a case, always make the award to the lowest bidder?

A. You mean lowest bidder as to price, I take it. You mean, in dollars and cents, the lowest bid? When we speak of the lowest bid, we mean the lowest bid, all factors considered.

Q. I am asking you to consider those factors which are included in the bid and nothing else. Let us confine ourselves to that.

5457 A. You will have to use my language and not use the loose term "lowest bidder"; because lowest bidder to a procurement officer of the Government means something entirely different apparently from what it means to you.

Q. What it means to me is this—whatever element is included in the bid—every single element that is included in the bid. That is what goes into the price, is it not?

A. Everything that is offered, or the price itself.

Q. What is the price itself?

A. The price itself is a quotation for certain material at a certain point.

Q. What is the point?

A. The point may be the point of use or the point may be at the bidder's factory.

Q. Now, in this instance is it the point of use or the bidder's factory?

A. We ask for prices both ways.

Q. I am talking about the cases where the bid is made f. o. b. factory. Now, that is clear to you, is it not?

A. Where I have under consideration with other bids, a bid f. o. b. factory—

Q. I am talking about where you have under consideration a number of bids, all of them f. o. b. factory.

A. And none at destination?

Q. I am talking about only the f. o. b. factory 5458 bids. What is the price?

A. You could not split a bid transaction.

Q. Let us assume that you have asked only for bids f. o. b. factory.

A. That is an assumption that is contrary to the facts. It is not done that way.

Examiner Norwood: Can not you answer the question by assuming this situation where you have a number of f. o. b. mill bids and none other and say whether or not, in an award by you, you would award it to the lowest f. o. b. mill figure?

The Witness: I can answer that question immediately. The answer is "Not necessarily".

By Mr. Zimmerman:

Q. What do you mean by "not necessarily"?

A. We would take into account the cost that the government would necessarily be put to in getting that material from that factory point to the point of use.

Q. That would have to be taken into consideration to find out the lowest price bid?

A. The lowest available price to the Government at destination.

Q. And that is the only price you can consider under Section 3709, is it not?

A. The lowest price received from a responsible bidder.

5459 Q. I am asking you whether or not the price—

A. I am putting the qualification in which always enters with 3709.

Q. The qualification is what it costs the Government at point of use?

A. What the material, meeting the specifications, costs the Government at the point of use.

Q. And that is always the determining factor—what it

costs at the point of use assuming, of course, that the commodity is up to standard?

A. That is correct.

Q. And that is the price upon which you make the award?

A. Yes, sir.

Q. Now, what is the difference between cost and price?

A. The price is what is quoted by the bidder and the cost to the Government is the cost to the user—the ultimate cost.

Q. Do you make the award upon a cost basis or upon a price basis?

A. We make it on the ultimate cost to the Government.

Q. How do you figure you can make an award not upon price that will come within the requirements of 3709?

A. Because 3709 merely requires that advertising shall be done before purchasing.

Q. Are you required by any law to make the award to the lowest bidder?

5460 A. The Comptroller General reads into that term "advertising" all of that, surely.

Q. Do you understand the law to be that you must make an award to the lowest responsible bidder?

A. We put it in another way.

Q. Excuse me; answer my question first of all and then I will let you explain as much as you like.

A. The question is incomplete because you have not entered all the factors that go into making the award.

Q. I am talking about factors that enter into the bid. Do you understand the law to be that you must make the award to the lowest price quoted by a responsible bidder?

A. The answer is no, unless that would develop the lowest cost to the Government.

Q. Now, what are the requirements of the law, if any, with reference to making an award? You state it in your own way.

A. The requirements of the law are that, with the exceptions which may be made in the case of the different departments for so-called open market purchases—the requirements of the law are that we will make the purchase and award after advertising.

Q. Now, you told me about the Comptroller General having ruled that there is something more to it than that.

A. Now, a great mass of the Comptroller General's de-

cisions are hinged on that very small but very important statute.

5461 Q. All right, go ahead. What is it?

A. He tells us that we must make our awards to the lowest responsible bidder offering material which meets the specifications, but by lowest responsible bidder there, the lowest responsible bidder is determined by ultimate cost to the Government of the material.

5462 Q. So, the Comptroller lays down rules in effect that you cannot make an award based only on the lowest price quoted f. o. b. mill?

A. His ruling would prevent such an award in many instances.

Q. Would it not, in all cases?

A. Not necessarily.

Q. All right, explain in what cases it would not?

A. Where the lowest price at the mill plus freight to destination is a higher total than another price at the mill plus freight to destination from that point.

Q. Would you make it then to the highest bidder?

A. That would make it to that bidder whose price, plus the freight to destination, would develop the lowest aggregate cost to the Government.

Q. Is not that exactly what I have said to you, that under those circumstances, the ruling is that you cannot make it upon the basis of the lowest price bid at the shipping point or f. o. b. factory?

A. My answer to that is that you cannot always make it on that; that there are other factors.

Q. And unless that figure, with the cost which must be paid by the Government to get it to the point of use added, gives you the lowest figure?

A. The lowest cost to the Government?

Q. Yes.

5463 A. That is correct.

5468 By Mr. Hershberger:

5470 Q. Let me ask you this question: Would you pay more for one brand of cement than for another at a point of use?

A. Under the same Federal or Government specifications?

Q. That is right.

A. No.

Q. Would you pay one penny a barrel more for Marquette cement than for Universal?

A. It depends on what the offer is.

Q. On the same specifications?

A. I thought I had answered your question before.

Q. I am just specifying now particular instances; in other words, your answer is no, you would not? You would not pay more for one cement that met the specifications than another? The difference in the name of the manufacturer or the difference in the place of manufacture would have nothing to do with it, as I understand it?

A. That is correct, except in an instance which really does not come into the situation at all here—where we had to match up a job half done.

Q. That is so there would be no variance in color or something of that kind?

A. We assume that all the cement offered meets the specifications as advertised and we would not pay one penny more for one as compared with the other.

5472 By Mr. Hershberger:

Q. Well, do you not reasonably expect cement bidders to try to equal the bids of other cement bidders knowing that you will not pay more for one brand of cement than you will for another, is not that a reasonable thing to expect that they will endeavor to meet the other bids?

A. We expect them to give us better bids; we hope that any bidder who bids will give us a lower bid than any of the other bidders bid, because we want to develop the best price we can for the Government.

Q. As far as those bidders whose bids remain high, they could not expect to get any business, obviously, under this testimony you have given, therefore it would seem to be reasonable that they should endeavor to equal the lowest bid, is that correct?

A. No, the correct statement there is that they should endeavor to be the lowest bidders, to get the business.

5474 *Redirect Examination by Mr. Wooden.*

Q. Mr. Ashley, Mr. Hershberger asked you whether or not you would pay more for one brand of cement than another. Would you be glad to pay less for one brand than another?

A. Delighted.

Q. As a matter of fact, is not that what your purchasing office duties are, to see if you can not—

A. (Interposing) To get the lowest available price on material meeting the specifications, always.

Q. If you had this condition Mr. Hershberger refers to of having each bidder make the exactly equal price as others, whether at destination or not, what would be the function of your office, or yourself as a purchasing official, could you not get along with an office boy just as well?

A. Someone who could write purchase orders.

5475 Q. That is all that would be necessary, to write out the order and place it either by lot or some other way. You do place awards by lot in handling cement purchases now, do you?

A. Many of them are made by lot.

Q. And is that because the destination prices quoted are equal?

A. That is because the cost to the Government would be the same whether we accepted Bid A, or B or C, perhaps.

Q. Now, Mr. Zimmerman asked you whether you did not need the destination price in order to determine whether the price at destination was fair, or something of that sort. Does the mere knowledge of the destination price enable you to determine whether it is fair or not?

A. Not necessarily; we regard that as another bid, of course.

Q. What standard of fairness in prices do you have to go by other than whether they are competitors?

A. We have no other standard.

Q. Do you have any knowledge of the cost of purchasing or selling cement, in order to form a judgment whether the price is fair or not?

A. No.

Q. In buying cement for your department, do you ship on Government bill of lading?

A. When we have accepted at the mill, yes, or
5476 when we have made an acceptance, rather, of this peculiar price that they quote us.

Q. Do you mean the Government destination cost?

A. Yes, Government destination cost. I will withdraw that about the mill cost,—that is not quoted to us.

Q. Do you take title at the mill, in order to ship on Government bill of lading when bids are submitted on a Government destination cost basis?

A. I think that we have to assume that we take title there, because we would not have a right to ship on Government bill of lading if we did not own it.

Q. When you take title at the mill, what is the price at which you take title?

A. In the case of cement, it is this particular quotation, less the cost of transportation, which we immediately incur again when we ship on the Government bill of lading.

Q. Then it is the price at the mill at which you take title?

Mr. Zimmerman: That is argumentative; he said this particular quotation less freight. Now, he ought to explain what he means by this particular quotation.

The Witness: A so-called destination cost is the term I think you used, is it not?

Mr. Zimmerman: I do not use any terms except those I find in the testimony.

By Mr. Wooden:

5477 Q. When you deduct from the Government destination cost under the so-called control clause, whichever rate is lower, land grant or commercial or special, the remainder is what you pay to the shipper, is it not?

A. That is correct.

Q. And the cost of transportation, is that paid to the railroad?

A. We pay the bill of lading.

Q. Do you deduct the freight—or, do you get Government destination cost on the bill of lading or on the invoice, rather, I would say?

A. That is nothing in our bill of lading except the freight charge.

5481 Q. Mr. Leisure asked you if it was not a fair statement that a summation of your testimony would

be that the manufacturers frequently made identical bids, and you agreed that it was. Is it also a fair statement that the dealers frequently did not make identical bids?

A. That is a fair statement.

5483 Q. Mr. Ashley, how far back does your experience with these identical bids in cement go?

A. I would say that it went back as far as my connection with bid work goes.

Q. That is how long?

A. 1925, I have been in this continually since 1925.

Recross Examination by Mr. Zimmerman.

Q. When you ship on Government bill of lading, that is only where there is a land grant rate involved, is it not?

A. Or a special rate.

Q. Yes, exactly, land grant or special rate, something lower than the commercial rate?

5484 A. Yes.

Q. That is only in an instance where it appears that figuring the destination cost you can make a saving by shipping that way?

A. Otherwise we would not incur the expense of settling a bill of lading.

Q. And that is an expense?

A. Yes, that is an expense.

5489 Washington, D. C.,
Wednesday, May 4, 1938.

5490 JOSEPH W. POWERS was called as a witness on behalf of the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Powers, in your previous testimony you have stated about the work that you have done concerning the investigation of the cement industry by the Federal Trade Commission. In that connection I would like to ask you whether you have, in connection with that work, had occasion to call upon and conduct any investigation in the offices of Mr. Frank Carnahan of the National Retail Lumber Dealers Association?

A. I have.

Q. On what date?

A. January 3rd and 5th, 1938.

5491 Q. Did you at that time secure from him any documents?

A. I did.

The witness identified Com. Ex. 1097 A, B, and C as a document supplied to him by Mr. Carnahan and represents the regional and state members of the National Retail Lumber Dealers Association. The witness requested a list of the membership and this list was supplied by Mr. Carnahan. In that connection, the witness stated that he wanted a list of the membership of the state organizations of the National and Mr. Carnahan represented to him that this was such a list.

Mr. MacIntyre: That is all.

Mr. Leisure: Are you going to offer it, Mr. MacIntyre?

Mr. MacIntyre: That is offered in evidence, 1097-A, B and C.

Mr. Leisure: Has this document been received in evidence?

Mr. MacIntyre: No, it is now offered in evidence.

5492 Mr. Leisure: You are now offering it?

Mr. MacIntyre: Yes, sir, it is now offered.

Mr. Leisure: May I look at it?

Mr. MacIntyre: Certainly.

Mr. Leisure: Your Honor, until some basis is laid for showing that it is in some way connected with this case, I have no choice except to object to it at this time as incompetent, irrelevant and immaterial. That objection must stand until some showing is made that it has some relevancy to this case.

Mr. MacIntyre: If Your Honor please, it is submitted by counsel for the Commission that the activities of Mr. Carnahan's organization, that is the National Retail Lumber Dealers Association, have been amply connected with the respondents in this case through the testimony of George H. Reiter, and through innumerable exhibits that were put into evidence at the time Mr. Reiter was testifying. It becomes incumbent upon the Commission, it is felt, to go further than to show Mr. Carnahan and the National Organization was in that way connected with the activities of the respondents and Mr. Reiter, but to also show that the State Associations were so connected as

members of the National organization, and this exhibit shows what organizations were members of the National.

5493 The Examiner: As I understand it, there were some letters received in evidence from some of these firms that are named in that list, is that right?

5495 Examiner Norwood: I should like to reserve that. I would like to look at the record on it. That has been marked for identification—

Mr. Zimmerman: (Interposing) Exhibit 1097-A, B, and C.

Examiner Norwood: I will look that up and find what the Commission is going to rule on the other.

Mr. Wooden: It is not only Mr. Reiter's testimony, but a number of exhibits showing collaboration of the National Retail Lumber Dealers' Association.

Examiner Norwood: I want to verify it.

5496 Mr. Leisure: I would like to state my objections to the exhibits offered by counsel for the Commission on April 7th and 8th. This is the first large group of documents which counsel for the Commission has offered, or is offering from the material produced by various respondents pursuant to subpoena duces tecum. The offer, as your Honor knows, consists of some 5,000 separate documents. For the purpose of preventing duplication of objections to the subpoenas and of repeating objections already made, I would like to state now that it is my understanding that all objections in the record made on behalf of any respondent, all of those objections are considered as having been made by all respondents?

Examiner Norwood: Yes.

Mr. Leisure: After stating some general objections orally to the entire group, in the interest of saving time we have prepared certain specific objections in writing which we propose to submit to your Honor, with the understanding that they will become part of the record, with the same force and effect as if stated orally, and with the understanding we not waive any of the objections to the subpoenas or to any treatment of the material submitted thereunder by doing so.

Examiner Norwood: Yes.

5500 Mr. Leisure: All of the papers in question appear to have come from respondents' files, that is, the papers produced under the subpoenas. There is, how-

ever, much material included in this offer, which appears to have been written by non-respondents, none of which indicates on its face by whom it was composed, sent or received. No witness has taken the stand with respect to any of the documents. We therefore object to the entire holus bolus offer of 5,000 exhibits. All of the documents offered are incompetent, irrelevant and immaterial and no proper foundation has been laid and they are not properly identified or authenticated.

5501 These documents are incompetent because no adequate foundation has been laid. They have not been properly identified. No attempt has been made to authenticate them by a person having knowledge of the fact of the writing or of its contents. Respondents have been thereby deprived of the right to examine on the voir dire persons who could authenticate the documents and to cross-examine them as to the contents.

These documents are irrelevant because they do not prove or tend to prove any of the allegations of the complaint, and they should not be admitted in evidence since they would only clutter up the record. They have no probative value and are not of sufficient intrinsic force to be worth considering by the Trial Examiner in making his report, or by the Commission in making its findings of fact.

These documents are immaterial, because on examination of the face of the documents themselves in relation to the pleadings and proof applied thus far in this case, there appears no purpose whatever for which they could be admissible.

They are also further inadmissible because of the fact that they are hearsay.

I desire to state a separate general objection to all of the exhibits as follows: namely:

5502 We object to the reception in evidence of these documents which are part of the papers previously proffered to Your Honor pursuant to the subpoena duces tecum. Your Honor will recall that after such production we objected to the turning over of these papers en masse to counsel for the Commission for their inspection and study. We have contended and still contend that this procedure violated the Fourth and Fifth Amendments to the Constitution, and the subsequent use made of those papers pursuant to that ruling amounted directly to an unreasonable search and seizure, and violated the principle of due

process of law. The method and means used by counsel for the Commission in obtaining these documents was illegal and unconstitutional, although obtained under the guise of a subpoena duces tecum.

It follows that the documents themselves, under all established principles laid down by the Supreme Court of the United States are not available to counsel for the Commission for any purpose in this or in any other proceeding.

In addition to objecting to the reception of these particular exhibits in evidence, I now demand on behalf of those respondents whom I represent, the immediate return to them of every paper proffered by them under the
5503 subpoena duces tecum, and I also demand that there be turned over every copy, photostat, digest, note or record made of these papers.

Shall we have a ruling as we go along, Your Honor, on those things, or shall we wait and have it at the end?

Examiner Norwood: I do not think that I should rule upon this until I hear from the Commission's de-
5504 cision on the other papers anyway.

Mr. Leisure: Now, many of these papers consist of letters from non-respondents. Material of this nature is admissible only when it has been previously shown that the respondents have replied to or otherwise acted upon it.

It is our contention that it would be unfair to have any of these respondents bound by unsolicited letters of third persons. We submit that no proper foundation has been laid for the offer of any such documents. Several of the papers which go to make up this offer do not appear to have passed between respondents, or to be part of any actual transaction. I submit that these facts connecting such documents with respondents should be first shown by counsel for the Commission.

In the absence of such proof the papers have no probative value and are not binding on the respondents.

I further object to the introduction of all the papers
5505 written by non-respondents and papers whose source is not identified on the ground that a proper and sufficient foundation has not been laid. I submit that these facts should be made to appear before we are called upon to object.

5506 Respondents should not be left to prove by their objection that a proper foundation could not be laid, and thus establish the negative of a proposition on which

counsel for the Commission has the burden of proof and procedure.

Now, as to the Pacific Coast defendants, a considerable mass of this material directly concerns the Pacific Coast, and I want to point out that the right to object has been reserved by those companies by virtue of a stipulation to that effect. We have already objected to the documents and are now objecting to those documents being offered as far as the respondents whom we represent are concerned.

I would like to amplify the statement that material submitted under a subpoena is not competent material or relevant upon offer by counsel for the Commission. This is true not only in respect to the authentication of documents,
but also as concerns any other objection which might
5507 otherwise be made. The offer of a document under
subpoena does not constitute a waiver of the rights of the party producing it to challenge its competency. The same applies to its relevancy and materiality. There can be little question but that the correct rule is that when a respondent produces documents under a subpoena, he is merely acting as an ordinary witness and does not surrender the rights he would ordinarily possess as a party respondent to object to the admission of any document on any proper ground.

The letters written by the respondents are replete with statements as to facts not within the knowledge of the writer. In some instances, it amounts to an expression of a personal opinion of the writer concerning a question of law or a matter as to which he had no authority to speak. In others the writer is merely repeating hearsay statements of other persons. It may be contended that every such statement constitutes an admission. This is not the law, for although the rules of evidence do not require that the admissions of a party be within the personal knowledge of that party, nevertheless the courts do not allow the reception of an admission which in form merely concedes
that some one else made a certain statement. In such
5508 a case the fact admitted would itself be merely hear-
say. Much of the material written by respondents and offered at this time falls clearly within this latter category and such documents should not be admitted on the ground of constituting an admission by a conspirator or a co-conspirator.

Assuming for the sake of argument that they are ad-

missions, the fact remains that a statement of opinion or hearsay has no probative value even when made by a respondent. He is not competent to testify to such matters over the objections of other respondents. Hence a corresponding statement although technically an admission, can never bind his co-respondent, even assuming that a conspiracy could be proven. Such admissions cannot properly be connected up with the other respondents.

I would like to point out even if such documents containing hearsay evidence were admitted as admissions, the probative value of such statements is so slight and nebulous that the introduction of the thing could not properly affect the outcome of this case and should not be allowed to encumber the record.

I therefore object to the admission of such documents, and I will call specific attention to such exhibits and
5509 request that your Honor rule that they are not properly admissible in this case.

Now, another large number of exhibits offered by counsel for the Commission concerns correspondence between dealers or dealer organizations and the respondents, trying to get respondents to sell cement only to them, or else to sell to others at a suggested mark-up. None of these letters are properly admissible as admissions of a co-conspirator, since an examination of these letters themselves clearly reveals the fact that the interests of the dealers are entirely adverse to the interests of the respondent manufacturers, and that as a result the letters involved merely indicate an attempt to influence or coerce the manufacturers rather than to cooperate with them in a common enterprise, within the meaning of the statute.

5510 Your Honor will also note that no such conspiracy has been alleged in the complaint or is proved by any facts appearing on the record thus far. The only evidence of cooperation between any groups of dealers and manufacturers is to the effect that the Code Authority for the Portland Cement Industry and the Code Authority for the Building Material Dealers Industry conferred with reference to a marketing plan to be included in the N. R. A. Code and that such conferences were held pursuant to the request of the N. R. A. Code Administrator. It also appears on the record that such a marketing plan was never adopted or employed by the Code Authority, since it was not approved by the N. R. A. Administrator.

Letters by dealers are not, therefore, admissible as admissions in the present state of the record, and it should be apparent that they could hardly even be charged of being co-conspirators to accomplish an end to which they objected so often and concerning which they brought so much pressure to bear.

5516 Mr. Wooden: In that connection let me say in Lawlor vs. Lowe, the Supreme Court held that the writings of third parties, namely dealers' writings as of the time, during the time the litigated acts were taking place, were admissible under the res gestae rule, and they were clearly hearsay otherwise, and yet they were admitted as coming within the res gestae rule.

5517 Mr. Leisure: The case cited by counsel, your Honor, upon reading it, I am sure your Honor will agree, is not the type of objection we are making at the present time to these letters that are written by third parties, and written by respondents in this offer. In that case the letters were part of a transactions which was then in process and I do not think they apply to this objection. That case applies to our objections.

Mr. Wooden: I certainly agree the acts and writings of the respondents who are in the position of co-conspirators or respondents' agents, come within the res gestae rule. They come within another rule. But even if not coming within the rule of the writings of conspirators and co-conspirators, all of the acts done by them are admitted under the res gestae rule, in my opinion.

Mr. Leisure: The authority is the other way.

As to the Federal statute, counsel for the Commission will probably take the position that many or all of the documents offered by them on April 7 and 8, fall within the Federal statute concerning entries made in regular course of business. Respondents contend that the documents contained within this offer are not within the scope of that statute. Even if they were, the conditions

5518 under the statute which might qualify the documents as exceptions to the hearsay rule have not been fulfilled. The statute does not permit the receipt in evidence of entries based upon voluntary hearsay statements made by third parties not engaged in the business or under any duty in relation thereto. The purpose was merely to permit a writing or record made in the regular course of business to be received in evidence, without the necessity of calling as witnesses all of the persons who had any

part in making it, provided that the record was made as a part of the duty of the person making it or on information imparted by persons who were under a duty to impart such information.

Mr. Wooden: (Interposing) It is a matter of the question of regular course as distinguished from duty, as I see it.

Mr. Leisure: Despite the apparent broadness of the language of the Federal statute, an examination of its legislative history, together with cases interpreting the same statute in various States, compels us to reach the conclusion that it should not apply to writings other than entries and records systematically made in the regular course of business. The documents contained in the 5519 offer made by counsel for the Commission on April 7 and 8 are not writings or records made as memoranda or records of any acts, transactions, occurrence or event, nor does it appear that these letters were made in the regular course of business or that it was the regular course of business to make such a record at the time of such acts, transaction, occurrence or event. The statute itself does not permit an interpretation to the effect that it is the regular course of business to write letters about everything, or even about anything which occurs in connection with a respondent's affairs.

It is our contention that these documents which contain hearsay evidence do not constitute a statutory exception to the hearsay rule and, as I previously pointed out, they do not fall within any of the common law exceptions to that rule.

Mr. Wooden: Here again, your Honor, of course it all depends on the particular document under consideration. These generalities, as I see it, cannot have any effective application because we do not know what we are talking about when we talk in these general terms. I am not aware there are any considerable number of the documents that come under the Federal statute that Mr. Leisure has been referring to, but if there should be such I would make the observation that respondents 5520 have carried on a regular course of business in the form of their Institute activities and general cooperative activities and have written many communications and exchanged many letters about that in the regular course of carrying on that business of the respondent Institute and its cooperative activities. But there it would

not be because of the regular course of business they were admissible, but because they are the acts and admissions of the respondents and as such are competent evidence against them.

As I say, there is no use in talking these generalities about all of these papers; we have to get down to particular instances and what the contention is.

Mr. Leisure: Now, your Honor,—

Examiner Norwood: (Interposing) As I understand, counsel is going to submit detailed objections in writing, and I think that method, possibly, will result in saving time.

Mr. Leisure: Your Honor, I thought we had an understanding that in trying to save time we would make certain general objections. If counsel makes the point these objections are useless because we do not designate the exhibit, then I have no choice except to take each exhibit and read all of the objections to each one of the 5,000 exhibits, if that is counsel's position.

5521 Mr. Wooden: I do not mean to take that position at all; I merely mean to say the Examiner or any one else who wants to consider objections must necessarily consider them as applicable to the particular papers.

Mr. Leisure: I think we should get that settled. There is no need of my wasting even an hour of your Honor's time—

Examiner Norwood: (Interposing) Counsel is discussing classes of papers here.

Mr. Leisure: There is no need of my wasting even an hour in trying to save time unless the objections are applicable to these exhibits, and it is my understanding, in trying to save time, we were to do just what we are doing and that it would be acceptable, but if it is not—

Mr. Wooden: (Interposing) But we do not have the objections treating the particular classes so we can know what the exhibits are.

Mr. Leisure: It goes to each and every exhibit; I have tried to save time by doing that.

Examiner Norwood: If counsel for the Commission is insisting that the class may not be ruled upon until each particular paper in a class is examined, I think he is right.

Mr. Leisure: When he first stated it, I understood
5522 as your Honor now states it, but this time it appears it goes to the objection and not to your Honor's ruling, but that the objection is ineffectual.

Examiner Norwood: I do not so understand it.

Mr. Wooden: No, I mean merely as to his ruling.

Examiner Norwood: Go ahead.

Mr. Leisure: Now, as to the Burns and Clark material submitted under the subpoenas, and I have reference to Exhibits 967-970 and 972-976, I will first take up certain Burns and Clark material being Commission's Exhibit No. 967, 968, 969, 970, 972, 973, 974, 975, and 976; I would like to indicate to your Honor our position as to the admissibility of all of these papers of the Burns and Clark survey.

With the exception of certain documents to which I will refer in a moment; Commission's Exhibit 967-970 inclusive and 972-976 inclusive, consist of answers to the questionnaire sent out by Professors Burns and Clark at the instance and for the use of counsel for the Cement Institute in connection with contemplated discussions with the Federal Trade Commission. These answers are in the nature of confidential communications passing between the members of the industry and counsel for the Institute. They were obtained under an expressed pledge of confidence and
5523 disclose trade secrets which are confidential in their nature. The fact that the communications were made through the agency of Professors Clark and Burns does not affect their confidential nature, nor do they lose their confidential character because it was contemplated the communications might be disclosed to the Commission in the course of discussions with it, since the conditions on which such disclosure was contingent were never fulfilled.

I, therefore, object to the admission of the exhibits to which I have referred on the ground they are privileged communications which were prepared for counsel and which fall within the attorney and client trade secret privilege. They are no more competent as evidence than our trial briefs would be. I further object to the admission of these documents until counsel for the Commission indicates what portions are considered by them to be relevant and material. Up to this point there has been no showing that any part of these exhibits was considered relevant, nor how any such relevancy has arisen.

5526 As to the admissibility, I want to point out also, your Honor, there has been no witness to take the stand and testify as to who made the answers; as to whether they had authority to bind the company or not. The record so far is entirely barren of any such ground-

work. It seems to me those are all important considerations as to admissibility. As I say, the Commission has not passed on the admissibility in evidence.

5527 Mr. Leisure: I want to point out to your Honor in considering these exhibits as to their admissibility, that the questionnaire of April 13, 1935, Commission's Exhibits 967-970 and 972-976, question No. 2, asks for the bulk differential per barrel and the proportion which bulk shipments bears to the total shipments. This has no bearing on the issues raised by the pleadings, or even on the proof to date. Under Rule 19, all matter of that character may and should be excluded.

5531 I would like to have your Honor also consider in ruling on this group of exhibits, question 4 which is concerned with uniform price zones.

5532 Port prices are excluded by inference, since they are covered by the preceding question. The pleadings do not raise any issue as to uniform price zones except those alleged to be instituted to meet the competition of imported cement.

Also, as to questions 5 and 6, which seek to ascertain the method of determining the cost of truck and barge transportation which was deducted in computing the figures set forth on the questionnaire tables, Exhibits 972 and 973. This question is not within the issues, as the element of price is not involved.

Also, as to Questions 7 and 8. They refer to net yields which are in excess of the seller's price base. Under the issues raised by the pleadings this question is irrelevant and immaterial.

Mr. Wooden: That is the heart and essence of Count 2 of the complaint.

Mr. Leisure: Question 9 is concerned with supplementary plants and their cost of operation. This is not within the issues.

Taking Question 11, it deals with the extent of the marketing territory of the different mills and the effect thereon of various factors. These include the establishment of new mills, the conversion of a nonbase mill into a basing point mill, changes in methods of transportation and

5533 changes in delivered prices in port areas; changes in marketing territory which are due to these factors are not within the issues of this case.

The same question also deals with the effect of these

factors in changing the proportion of sales which yield less than the seller's price base. We submit that the operation of these economic factors is in this respect also irrelevant and immaterial.

Examiner Norwood: I shall rule on these papers as to whether they are relevant and material and shall consider such of those as are material and if there happen to be some irrelevant and immaterial matter, it will
5534 be disregarded. We will take that up later, however. Go ahead.

Mr. Leisure: I wish to direct your attention to Question 12 of the questionnaire. It relates to the concentration in particular territories of sales yielding nets below the seller's price base. This is not within the issues.

Mr. Leisure: Question 13 inquires whether a basing point mill actively solicits business throughout the whole of the territory governed by its prevailing price base. This, likewise, is irrelevant and immaterial.

Question 14 seeks to determine whether basing points have been created at any place other than points of supply. There is no allegation to this effect in the complaint.

There is no allegation that one producer has established a base point at another's mill or reduced the price base in effect at the latter point. It is submitted, therefore, that Question 15 and parts of 22 are clearly irrelevant and immaterial.

Questions 16 and 17 ask for the location of chain mills and the effect on price conditions of the absorption
5535 of rival mills into chains. This entire subject is irrelevant and immaterial.

Taking up question 18, it seeks to ascertain criticisms of the basing point method by buyers. The answers to this question have no tendency to prove the issues of this case and at best are mere hearsay evidence.

That same Question 18 deals with the tendency, if any, of buyers to purchase from the most distant mill. This has no bearing on the issues in the pleadings.

Now, as to Question 19, it contains an investigation of changes in selling costs. It is not within the issues of the pleadings.

Question 20 asks whether basing points have been limited in geographical application. This was not tendered as an issue by the complaint.

Questions 23 and 24 consists of a special questionnaire which confines itself to the internal policies of chain mills such as price changes at the mills which make up the chain, differential in their price bases, and the allocation of orders as between differently located mills belonging to the same chain. These problems are in no way relevant and are not within the issues drawn by the pleadings.

Question 25 consists of a special questionnaire
5536 which is directed at determining the effect of sales and volume when a mill is converted from a basing point to a non-base mill, or vice versa. The question of price is not involved, and this subject is irrelevant and immaterial because of that fact.

The tables, Commission's Exhibits 972 and 973, accompanying the questionnaire are designed to furnish information as to the volume of business done under various marketing conditions. Figures have been furnished which represent the volume of shipments made at various net yields; the volume sold in depressed price areas; the volume of business moving by means of various methods of transportation, and the volume of business carried on with railroad and public authorities. These are trade secrets and have no bearing on any of the issues raised by the pleadings in this case.

Mr. Leisure: Now, as to the supplemental questionnaire of July 24, which is marked Commission's Exhibit 974, it is directed mainly toward clarifying the tables and is equally irrelevant to any of the issues in the
5537 case. Therefore we say, Your Honor, until counsel for the Commission indicates what portions are claimed to be relevant and makes a showing as to how they are relevant, we make the further objection to the introduction into evidence of any of this material on the ground that it is irrelevant and immaterial and that Your Honor is not even in a position to rule intelligently upon the offer.

We make the further objection—

Examiner Norwood: Of course, I can examine the papers myself and see if there are any parts that are relevant, can I not?

Mr. Leisure: It is apparent at this time in the proceeding, counsel having investigated the case, he should know why he has produced the paper and why it is material and relevant, and it seems to me there should be some

showing instead of just producing a paper and offering it.

5538 Mr. Wooden: One could make a number of replies to these specific objections as to certain answers to certain portions of the questionnaire. I had not thought it necessary to do that, only in certain instances where I thought it would be more important, but the ground on which all the answers in the questionnaires are competent and relevant is that it may represent a part of the activities of the respondents' employed agents, employed for the purpose of studying the basing point system and making the best economic defense of it that could be made.

Now, aside from their relevancy and competency on that ground, the question of the materiality of each particular answer to a particular question, that will be a wide range of variation, and there will be a wide variation in the weight, which is just another term for materiality, but I contend that there is none of them wholly without weight, because they were brought in as competent and relevant under the broad general purpose that characterized the preparation and the answers made to the questionnaire.

Examiner Norwood: Go ahead.

Mr. Leisure: In view of counsel's objection, or rather his statements to our objections, I am wondering if he believes it would be possible to have anything that

5539 would be irrelevant. One of these questions asks some personal questions of a respondent, and I am merely stating specifically why some of the questions are not relevant or material to the issues in this case under the pleadings as drafted.

I have a further general objection, in fact I have several, but now I want to go on with the general objections.

The Examiner: Go ahead.

Mr. Leisure: One of the general objections is as to pencil notations. Mr. MacIntyre, a moment ago made some reference to there being a difference in one copy of the so-called famous Treanor letter and another which has been submitted, because one had notations. Clearly we object to any notations unless they have been properly identified and authenticated.

5540 I also object to the admission of any pencil notations which would appear on the face of these exhibits on the ground that no attempt has been made to identify the author or otherwise to authenticate the writing.

Such notations as may be shown to have been written by Professors Clark and Burns are also objected to on the ground that they are incompetent, irrelevant and immaterial. These are no more admissible than a work-sheet or report of these men would be. Such notations were not made by the respondents or by anyone authorized by them to make such notes, and therefore these notes can not bind them. The Federal Trade Commission itself, by its ruling on whether the Burns and Clark material could properly be subpoenaed, excluded worksheets
5541 from the subpoena. These notations are in the same category as worksheets and are therefore equally inadmissible.

The subpoenas pursuant to which these documents were produced very clearly did not cover notations which were made after respondents parted with possession of the documents and which are not shown to have been called to their attention.

I therefore move, pursuant to Rule XIX of the Commission, that if any of these exhibits are admitted by Your Honor, that these notations be excluded and that the same be physically stricken from the face of the exhibits.

Mr. Leisure: On page 5322 of the record it was
5542 stated, Your Honor, that these exhibits consisted of the Burns and Clark questionnaires. In the mass of material so designated, however, there is included correspondence between members of the industry and Professors Clark and Burns, such as the following:

Commission's Exhibits 967-18-0; 970-3W to X; 9-U to V; 15Y to 16A; 974-4X; 9P; 9T; 10E; 13J; and 15C.

Also included are worksheets of Professors Burns and Clark, such as the following:

Commission's Exhibits 967-3U; 974-1H; 5E; 6T; 7J; 9X; 10S; 11I; 11U; 13C; 14Y; and 13-O.

These, Your Honor, are instances of material of this nature which, because of the great mass of material, I am not prepared to say that these lists are entirely complete, and I would like to ask counsel for the Commission if it is his purpose to offer this material along with the questionnaires, or whether they just got in by accident, because as I say, it is my understanding that the Commission ruled that the worksheets were not subject to the subpoena. If it is, we object to the introduction of the

worksheets on the further ground that the declarations contained therein are not authorized by the respondents and are not binding on them.

5543 Mr. MacIntyre: If Your Honor please, we consider the papers that have just been referred to by Mr. Leisure as being attached to the questionnaires, as not falling within any ruling of the Commission to the effect that we could not secure them under the subpoena or offer them. They are in the nature of notes and transmittal notes, attached to the questionnaires and become therefore a part of the questionnaire, in our opinion, and we are offering them as such.

Mr. Leisure: Now, there is no special magic in a brad or a pin, and if the worksheets happen to be attached to an exhibit, it still falls within the ruling of the Commission, as I understand it, and we make the objection, as I have stated, these worksheets would not be admissible, if we had no ruling from the Commission. We have a ruling from the Commission which specifically excludes them and I do not think they should be offered in evidence.

5544 Mr. Leisure: In this survey, Your Honor, it not only covered answers from what has now come to be respondents in this case, but the survey covered mills that are not now respondents, and we have submitted all of those, not only the answers to questionnaires of respondents, but non-respondents. Now, as to the questions answered by non-respondents who have no connection with this case, we object to those.

5545 Mr. Leisure: I have already stated that many of these questionnaires went to parties or to companies who later did not become respondents in this case. I think that is clearly in the record. Exhibits 967-1Q-2F; 968-18F-I and 974-15D-F, purport to be answers of the Pacific Coast Cement Company to the questionnaire. This company should not be confused with the Pacific Portland Cement Company, which is not a respondent. Exhibits 967-12U-13H; 968-17T and 974-13W-Y, purport to be the answers of the U. S. Portland Cement Company to the questionnaire. This company also was not a respondent.

Exhibits 969-11N-12A and 974-40-Q, purport to be the answers of the Allentown Portland Cement Company to the questionnaire, and that company is not a respondent in this case.

Exhibits 975-18L-19N, purport to be the answers of the

Louisville Cement Company to the questionnaire.
5546 This company is not a respondent.

Exhibit 976-2P-3F purports to be the answers of the Republic Portland Cement Company to the questionnaire. The Republic Portland Cement Company is not a respondent.

These questionnaires of non-respondents are not admissible in evidence as they do not constitute admissions, in so far as they deal with the activities of respondents, they are necessarily opinion evidence and are therefore hearsay.

5550 The Burns and Clark questionnaires are not admissible because they are not properly authenticated, as I have already stated. They are unsigned, so that
5551 there are no facts which show or tend to show who submitted the questionnaires and whether the person who prepared it was authorized to do so or to bind his own corporation, much less bind any of the other respondents in this case.

I do not say, your Honor, that any of these things cannot be properly proven and properly put in evidence. I simply say it has not been done so far in accordance with correct procedure.

In addition to the questionnaires, there have been offered voluminous correspondence about the Burns and Clark survey. Much of this material passed between the members of the industry and Professors Clark and Burns. The privilege attaching to the questionnaires clearly extends to this material and its admission is objected to for that reason. We are objecting to it at this time to reserve our objection on the record, before it is admitted in evidence.

I would make the further objection that none of this material has been shown to be material and relevant. Your Honor will recall I objected to the questionnaires themselves on the ground that much of the same was clearly irrelevant, and that it therefore devolved upon counsel for the Commission to make a showing as to what portions
5552 were relevant. The same objection applies with even greater force to the correspondence relating to this survey. The greater part of this material consists of letters explaining and amplifying the answers to the questionnaires. In general they are intended to explain the ambiguities found in the questionnaire and respondents'

answers, and to answers to the questions raised by the latter. It should be clear that the relevancy of such correspondence is largely dependent upon the relevancy of the questionnaire which it is intended to supplement, and we have objected to the materiality and relevancy of a large number of the 25 questions contained in the questionnaire.

In other words, if your Honor should rule that some of these specific questions which I have already referred to are irrelevant, clearly correspondence between Professors Clark and Burns and the company submitting the answer would be equally irrelevant. The answers on the questionnaires are not complete. We are deprived of our right of cross-examination to further develop the facts, if they are admitted in evidence in this fashion, without a proper foundation being laid.

The offer in this form of these letters inflicts an undue hardship upon the respondents. A given letter will frequently involve comments on eight or ten separate
5553 questions, some or all of which we have objected to.

Where there is no showing as to the materiality and relevancy either of the original questionnaire or of the consequent correspondence, it is a hopeless task to examine these papers and attempt to formulate any intelligent objections with respect to the materiality and relevancy of the subject matter of any or all of these documents.

I therefore reiterate the objection that none of this material is admissible until counsel shows what parts are relevant and how such relevancy arises to the satisfaction of your Honor. I object specifically to all letters containing any answers to questions 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, and 25, and to the tables accompanying the questionnaires. I have already stated my objections concerning this material with reference to the questionnaires themselves, and I move that, if any letter or memorandum is contained which includes any material concerning these questions or tables, it be stricken from the exhibit or that your Honor rule that such parts are not to be considered in evidence.

The offer of proof in this connection on record page 5340 is confined to negotiations between the Institute and the
Commission, and negotiations between the Institute
5554 and Professors Burns and Clark. The offer states, on the record at page 5340:

"I would like to state for the record that the group of

exhibits which has just been offered may be characterized as relating to and reflecting the activities of the Public Relations Committee of the Cement Institute, the Cement Information Bureau of the Cement Institute and certain negotiations of the Cement Institute or its representatives with the Federal Trade Commission and negotiations of the Marketing and Research Committee of the Cement Institute with Professors Clark and Burns."

This offer is not broad enough to include the hundreds of documents which deal with respondents' answers to the Burns and Clark questionnaire. These documents do not bear on the issues indicated in the offer of proof and are therefore irrelevant.

Moreover, those documents which do bear on the offer of proof are irrelevant and immaterial for the reason that the purpose stated is not within the issues of the case and has no bearing on its merits. The fact that respondents instituted negotiations with the Commission and made a study of the so-called basing point method of marketing in order to aid in its defense in the event of an attack
5555 upon the same, is no more relevant to the issues than is the letter of retainer of counsel and the preparations undertaken for the defense of this case. These facts have no probative value and evidence tending to prove them is objected to as being irrelevant and immaterial.

5556 Mr. Leisure: Your Honor, with further reference to the Burns and Clark material, I would like to point out that the act of preparing these documents and the facts contained therein were not done in furtherance of any conspiracy and certainly not in furtherance of the conspiracy set forth in this complaint. I request, therefore, that if any of this material be admitted, its admission be qualified and limited to affect only the respondent who wrote the material.

5557 Mr. Leisure: I have already pointed out that under the description of negotiations by the Institute and Professors Burns and Clark with the Commission, numerous letters between the latter and the respondents relating to the economic survey were offered.

5558 Another example of where the purpose stated not entirely reflects the subject matter contained in the documents is found in the file of papers which, according to record on page 5344, was offered in relation to arbitrary

price areas at ports. Actually, few of these documents appear to relate to the subject, the vast majority being concerned with marketing problems in the Great Lakes area.

I have already referred to pencil memoranda and to other pencil marks on the exhibits. I call your Honor's attention to the fact that numerous exhibits bear pencil marks on their face. Some consist of notations, others of marginal marks and underlinings. There has been no offer to authenticate these and it is my understanding that memoranda not identified or authenticated is not to be received in evidence. At least, we object to any of it that appears on these exhibits.

The N. R. A. material, as to such of that material as is contained in this offer of 5,000 exhibits, we reserve the general objection that a large part of this material, all papers relating to transactions which took place during N. R. A. or during the interim period which followed upon the Schechter decision, is objectionable. The material
cannot properly be considered, since such activities
5550 were done with the express approval and at the re-
quest of the United States Government and for this reason I object to its admission in this offer.

There are many incomplete documents, also in some instances there are duplications, as high as three copies of the same letter having been offered, and in others there is the original and a photostat that have been offered. I think counsel for the Commission should reexamine the material which has been offered and withdraw the offer of any of these duplications, and I also think that they should either withdraw the offer of incomplete documents, or else complete the offer so as to allow us to make an intelligent objection to them.

5560 I want to take up a general objection to the group of exhibits which, I suppose, particularly fall under the heading T. V. A. These were offered on pages 5312 and 5313 of the record. The purpose of the offer was not stated. These documents, however, relate to conferences and communications with and deal with negotiations with the Tennessee Valley Authority. The T. V. A. is mentioned only once in the complaint.

5561 Paragraph 8, sub-paragraph J, and there it is alleged that the T. V. A. was given a reduced price on cement by threatening to acquire a cement mill. Any inordinately low price which a cement company granted is

readily provable by the introduction of direct evidence of the prices which the T. V. A. received, and these facts are already set forth by oral and written evidence now in the record.

The exhibits relate only to negotiations between the T. V. A. and certain members of the portland cement industry—

Mr. Leisure: (Continuing)—concerning the matter of assisting the T. V. A. in working out an especially advantageous method of buying a substantially definite and very large quantity of portland cement to be delivered over a definitely estimated period of time at definitely specified destinations for use in a specified project. Neither the effort nor the project involved any ordinary commercial transaction, but on the contrary involved a very extraordinary and specific Government job. The project did not involve the delivery of ordinary and usual commer-
5562 cial quantities of portland cement, but on the contrary involved such unusual and extraordinary quantities and deliveries [illegible] no single contiguous mill was equipped to handle the requirements and make the deliveries in the quantities essential to the enterprise.

The project further involved a vitally important question of public policy—that is, the policy of the Government of the United States engaging directly in industry not only to the extent of the manufacture and sale of electric power on a gigantic scale and the manufacture and sale of chemicals for use as fertilizer, but also of even greater importance to the Portland cement industry and to industry and the taxpayers as a whole, of the Government engaging in the building of a cement plant and entering into direct competition with private industry, which it was announced it contemplated doing.

5563 Moreover, it had to be considered that the building of such a plant would materially increase the production capacity of the Portland cement industry at a time when that production capacity far exceeded the demand in that year, 1934, and had exceeded it for several previous years. I submit that it was proper to consider that the building of this plant at that time might have been a precedent for the building of other plants in other places with the unavoidable result of irretrievable loss to the industry if not its complete demolition, which would have

made the communities gathered around the existing cement mills into ghost towns.

The entire negotiations are now and for several years have been a completed and closed incident.

5564 The effort to solve that problem is in no way illustrative or, relevant, or pertinent to any ordinary and usual practice in the industry, and the documents relating thereto are not pertinent, relevant or material to any issue arising out of the complaint or to the question as to whether or not within its remedial power the Federal Trade Commission should not enter any order against all or any of the respondents to the present complaint based, in whole or in part, upon such documents as evidence.

The group of documents to which I have referred—and I am now stating these objections—goes beyond the proof required by the allegations of the complaint, for it includes memoranda of conferences and conversations had with representatives of T. V. A., drafts of proposed telegrams and letters, unidentified tabulations of bids, incomplete documents, invitations to dinner, and the like. Among the documents here offered are drafts of documents which are already in evidence.

This whole group of documents is so remote and so unrelated to any charge made in the complaint, we submit, that receiving them in evidence would only tend to clutter up the record without any benefit to Your Honor, and they are unnecessary and inadmissible.

I have already made a number of general objec-5565 tions which would apply to this group, and specifically, we say, first, they are incompetent, irrelevant and immaterial because there has been no offer of proof and the relevancy of these papers does not appear;

Second, because an objection to the Government going into business is not an activity in restraint of trade under the anti-trust laws;

Third, because the negotiations were carried on and the final outcome reached with the full cooperation of the purchaser which was also a Government agency;

Fourth, because the negotiations were carried on at the instigation of a Government agency;

Fifth, because the object of the negotiations was to obtain a so-called fair price under very special circumstances. This was to be determined upon the basis of cost plus a reasonable profit and was to be reached without reference

to the elements which go to make up the ordinary market price. Hence, there is no relationship between the two prices.

Moreover, the submission by the various members of the industry to the terms imposed by T. V. A. was not considered by either side to be an admission by any cement company that the price finally reached was above cost or was a fair price. Hence, no valid comparison can be made with the ordinary market price.

5566 Your Honor, if any of these documents are admissible, I would like to point out that they are at best merely cumulative in character and that no useful purpose is served by admitting them in evidence.

5568 Mr. Leisure: I think Your Honor understood that my statement and my argument that Mr. Wooden referred to is the statement which I wanted Your Honor to consider, not at the close of the case, but now with reference to whether you will admit in evidence these documents and the documents to which I have specifically referred are all on page 5312 and 5313 of the record. I have made a list of them and at the same time I will just give it to the stenographer so that he can copy it.

937-000-PPP; 937-D-E; 933-7H; 933-7I; 933-7J; 925-8V-8W; 925-4T-4Z; 925-5A-5C; 925-5S-5T; 925-6A-6K; 870-15H-15I; 562-14R; 495-A-B; 883-2K-2N; 883-

5589 Y-2H; 883-2I; 883-V; 883-R; 883-S-T; 883-Q; 883-J-O; 562-11J-11K; 562-12C-12D; 562-12H-12N; 562-12X-13T; 562-14H-14I; 562-14V; 562-15B-15D; 562-9-0; 562-9T-9X; 562-9J; 562-10C; 562-10E; 562-10D.

5570 Mr. Leisure: Now, with further references to pages 5312 and 5313, as of April 7, 1938, on the record, Exhibit No. 562-9T and 9U is a letter from Mr. Blaine S. Smith of Pennsylvania-Dixie to Mr. John Treanor of Riverside, dated April 25, 1934, purporting to enclose two maps. I wish to renew my objection that this is N. R. A. Code material. This document is a narrative in form and is not in furtherance of any conspiracy, therefore it is not binding on other respondents and has no probative value.

I object to the introduction of this material on the ground it relates to general business conditions in the cement industry in the Tennessee Valley. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

In this document also an unidentified pencil notation appears on the face of the exhibit.

I object to the simultaneous offer of a photostatic copy of a carbon-copy of this same document which appears as Exhibit 937-D and E.

Without make specific objection, I have listed them so that they can be copied without taking the time of the Court.

5571 Exhibit No. 937-OOO and PPP, is a photostatic copy of a letter from L. T. Sunderland of Ash Grove to Blaine Smith, chairman of the Institute Committee, dated September 17, 1934. I renew my objection that this is N. R. A. Code material. I object for the further reason that it states the personal opinion of the writer and is therefore merely unsworn evidence. I also object to the introduction of this material on the ground it relates to a personal reaction to a committee report on the feasibility of proposed T. V. A. cement plant at Sheffield, Alabama. It is, therefore, irrelevant, immaterial, and does not tend to prove any of the allegations of the complaint.

Now, there are about fifty pages running here similar to the two paragraphs I have read concerning the two last exhibits, and if it meets with your Honor's approval, instead of taking time to read them, I will simply offer them and have them made part of the record.

5572 Mr. Leisure: Exhibit No. 933-7h is a letter from M. C. Monday of Cumberland to Joseph S. Young of Lehigh, dated January 8, 1936. I object to the introduction of this material on the ground that it relates to a discussion of proposed meeting on January 29th of executives of companies operating in District 6. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 933-7i is a carbon copy of a telegram from Joseph S. Young of Lehigh to M. C. Monday of Cumberland, dated January 7, 1936. I object to the introduction of this material on the ground that it relates to Mr. Young's inability to attend the Knoxville meeting on January 29, 1936. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 933-7j is a telegram from M. C. Monday of Cumberland to Joseph S. Young of Lehigh, dated January 4, 1936. I object to the introduction of this material

on the ground that it relates to an invitation to 6th
5573 District meeting on January 29th at Knoxville. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 925-8v, 8w is an unaddressed carbon copy of a report of telephone conversation between Blaine Smith of Pennsylvania Dixie and Dr. A. E. Morgan of TVA, dated September 26, 1934, with typewritten signature of Blaine Smith. I renew my objection that this is NRA Code material. I also object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. Further, Dr. Morgan's statements do not bind the industry. Their repetition by Smith is mere admission that they were made, but not that they were true as made. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I further object to the introduction of this material on the ground that it relates to statements of proposed TVA building program and discussion of the $1.30 rate offered for cement by TVA. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5574 Exhibit 925-4t,-5c is a group of unaddressed, unsigned tabulations of TVA Dam bills typewritten on blank paper. At the top of each sheet is the name of a cement company. Following this are four columns headed: dam, bbls, delivery, and net. I object to these documents which have not been in any way authenticated. Neither has proof been presented that these documents were called to the attention of other respondents or are in furtherance of a conspiracy so as to bind them. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit. I also object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 925-5s, 5t is a carbon copy of a letter from Blaine Smith of Penn-Dixie to six cement companies, dated October 20, 1934, purporting to enclose awards of TVA cement contracts at request of TVA. I renew my

objection that this is N. R. A. Code material. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. Also, I object to the introduction of this material on the ground that it relates to TVA cement contracts, which contracts are already in evidence as
5575 Exhibits 403 and 404. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 925-6a-6d is an original letter from Code Authority P.C.I. to officials of twenty-four companies, dated October 10, 1934. I renew my objection that this is N. R. A. Code material. I also object for the reason that it contains statements or opinion and hearsay regarding facts not within the knowledge of the writer. Further, I object to the introduction of this material on the ground that it relates to prices, terms and conditions filed with Code Authority for use in bidding to TVA. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 870-15h, 15i is a carbon copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated September 13, 1934. I renew my objection that this is N. R. A. Code material. I also object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. Further, I object to the introduction of this material on the ground that it relates to negotiations between the cement industry and the T.V.A. It is therefore irrelevant
5576 and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 925-6e-6k is a carbon copy of a letter from Blaine S. Smith, Chairman of the Institute Committee, to officials of five cement companies, dated October 9, 1934, enclosing "Memoranda of Meeting of Cement Institute Committee with TVA on October 2, 3, and 4 in Knoxville, Tenn." I renew my objection that this is N. R. A. Code material. I object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. Further, I object to the introduction of this material on the ground that it relates to a discussion of the use of Government bill of lading with

destination prices. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-14r is a carbon copy of "Memorandum of Substance of Telephone Conversation between John Treanor (Riverside) and Dr. Arthur E. Morgan (TVA)," dated September 29, 1934, over typewritten signatures of Blaine Smith. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. Personal views
5577 of John Treanor as stated herein are merely unsworn opinion evidence which cannot bind respondents. The views of Dr. Morgan, an agent of the Federal Government, are not properly admissible in this form. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material on the ground that it relates to the legality of provisions in Government specifications to bid. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 495 a, b, is a photostatic copy of a carbon copy of a letter from Blaine Smith of Penn-Dixie to S. W. Storey of Signal Mountain, dated September 26, 1933, enclosing Price Waterhouse report of "Cost and Production Statistics, District 6." I renew my objections that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I also object to the introduction of this material on the ground that it relates to cost and production statistics for District No. 6. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-2k-2ff is an unaddressed mimeographed copy of Institute bulletin headed The Cement Institute—"Land Grant Rates for TVA Projects." Unidentified pencil notations appear on the face of the exhibit. I
5578 renew my objection that this is N.R.A. Code material. The typed paragraph at the end of the bulletin has not been identified with the mimeographed rates which precede it. I further object that this information, secured from Federal Traffic Section, has no probative value.

Exhibit 883-2f is a carbon copy of the first page of a letter to general traffic manager of five cement companies, dated November 24, 1936, purporting to attach a copy

of a letter written by L. B. Rockwell to the writer, who is unidentified because the letter is unsigned. I strongly object to the offer of this incomplete document, the whole of which, I am sure, was tendered under the subpoena, and request that counsel for the Commission withdraw the offer or complete it so that we may object more fully. I object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. I also object to the introduction of this material on the ground that it relates to negotiations with TVA as to land grant rates to Chickamauga Dam site. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5579 Exhibit No. 883-y is a carbon copy of a letter from D. S. Browder of Penn-Dixie, to general traffic managers of five cement companies, dated January 5, 1937. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. Furthermore, the acts and views of L. B. Rockwell, a government employee, cannot bind the industry as stated in this letter. I further object to the introduction on this material on the ground that it relates to the efforts of private companies to settle a rate problem at the request of a government agent.

Exhibit 883-z is a letter from J. B. Johnson of Cowham to D. S. Browder of Penn-Dixie, dated December 30, 1936. I object to the introduction of this material, on the ground that it relates to a request for information on land grant rates on cement moving to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883(2a) is a letter from E. S. Gubernator of Lehigh to D. S. Browder of Penn-Dixie, dated December 11, 1936. I object to the introduction of this material on the ground that it relates to the average number

5580 of barrels per car in shipments to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883(2b) is a letter from J. B. Johnson of Signal Mountain to D. S. Browder of Penn-Dixie, dated December 3, 1936. I object to the introduction of this

material on the ground that it relates to the average barrel shipment per car to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883(2c) is a letter from Frank E. Guy of Universal Atlas, to D. S. Browder of Penn-Dixie, dated December 2, 1936. I object to the introduction of this material on the ground that it relates to the average number of barrels per car in shipments to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883(2d) is a letter from C. M. Apgar of Alpha, to D. S. Browder of Penn-Dixie, dated November 30, 1936. I object to the introduction of this material on the ground that it relates to the average number of barbarrels per car in shipments to Chickamauga Dam. It therefore irrelevant and immaterial and does not
5581 tend to prove any of the allegations of the complaint.

Exhibit No. 883(2e) is a letter from R. J. Mann of Lone Star to D. S. Browder of Penn-Dixie, dated November 27, 1936. I object to the introduction of this material on the ground that it relates to the average number of barrels per car in shipments to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883-v is a letter from Frank E. Guy of Universal Atlas to D. S. Browder of Penn-Dixie, dated February 23, 1937. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to an inquiry as to developments on land grant rates to Chicamauga Dam site. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883(r) is a carbon copy of a letter from D. S. Browder of Penn-Dixie, to L. B. Rockwell of the T.V.A. dated February 27, 1937. I object to the introduction of this material on the ground that it relates to a request for information on land grant rates to Chicamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5582 Exhibit No. 883-s-t is a carbon copy of a letter from D. S. Browder of Penn-Dixie, to general traffic managers of five cement companies, dated March 31, 1937, purporting to attach a copy of L. B. Rockwell's letter of March 2, and attaching statement showing how two formulae for land grant rates can be used. I object to the introduction of this material on the ground that it relates to a method of figuring land grant rates to Chickamauga Dam suggested by a government agent. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883-c is a letter from Frank E. Guy of Universal Atlas, to D. S. Browder of Penn-Dixie, dated April 2, 1937. I object to the introduction of this material on the ground that it relates to the adoption of a formula suggested by a Government agent for figuring land grant rates to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883-j is a letter from J. B. Johnson of Cowhan, to D. S. Browder of Penn-Dixie, dated June 22, 1937. I object to the introduction of this material on the ground that it relates to an inquiry as to further develop-
5583 ments in figuring land grant rates to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 883-k is a letter from C. N. Apgar of Alpha, to D. S. Browder of Penn-Dixie, dated June 10, 1937. I object to the introduction of this material on the ground that it relates to the adoption of a formula suggested by a Government agent for figuring land grant rates to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-L is a carbon copy of a letter from D. S. Browder of Penn-Dixie, to C. N. Apgar of Alpha, dated May 29, 1937. I object to the introduction of this material on the ground that it relates to the suggestion that the addressee is using an incorrect land grant rate to Chickamauga Dam. Since these land grant rates were furnished by TVA, the document is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-m is a letter from C. N. Apgar of Alpha to D. S. Browder of Penn-Dixie, dated May 24, 1937. I object to the introduction of this material on the ground that it relates to the adoption of a formula suggested by the Government agent to figure land grant rates to Chicka-
5584 mauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-n is a letter from Frank E. Guy of Universal Atlas to D. S. Browder of Penn-Dixie, dated April 30, 1937. I object to the introduction of this material on the ground that it relates to an inquiry as to whether the formula suggested by a government agent is acceptable to TVA. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-o is a letter from J. B. Johnson of Cowhan, to D. S. Browder of Penn Dixie, dated April 19, 1937. I object to the introduction of this material on the ground that it relates to the acceptance by the TVA of the formula for figuring land grant rates suggested by its agent, L. B. Rockwell. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 883-2g-2: is a carbon copy of a letter from Blaine Smith, Chairman of the Cement Industry Committee, to officials of five cement companies, purporting to attach Browder's reply to L. B. Rockwell's letter and attaching
a copy of Smith's letter to Garity of TVA dated July
5585 6, 1936. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to a reduction in land grant rates to Chickamauga Dam. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 562-11j-11k is a carbon copy of a letter from John Treanor of Riverside to Joseph S. Young of Lehigh, dated August 1, 1934. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. Further, I object to the introduction of this material on the ground that it relates to the agreement reached between TVA and certain cement companies. It is therefore irrelevant and

immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-12c, 12d is an unsigned, uninitialed carbon copy of a letter written from the Waldorf-Astoria, New York, to Blaine S. Smith of Penn-Dixie, dated August 23, 1934. I renew my objection that this is N. R. A. Code material. Also, I object to this document because it has
5586 not been authenticated in any way. Unidentified pencil notations appear on the face of the exhibit. I also object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. Further, I object to the introduction of this material on the ground that it relates to negotiations with government concerning cement for TVA. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-12h is a telegram from Blaine Smith of Penn-Dixie to John Treanor of Riverside, dated September 5, 1934. I renew my objection that this is N. R. A. Code material. I object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. Unidentified pencil notations appear on the face of the exhibit. I object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. I further object to the introduction of this material on the ground that it relates to advice which Mr. Treanor requested Mr. Smith to give him. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the com-
5587 plaint.

Exhibit No. 562-12i-12k is a carbon copy of a telegram from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated September 5, 1934. I renew my objection that this is N. R. A. Code material. I object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. The final telegram to Dr. Morgan, of which this is a draft is already in evidence (354-b, d). Also I object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. I fur-

ther object to the introduction of this material on the ground that it relates to a personal telegram which Treanor proposes to send to Dr. Morgan. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-12l is a carbon copy of a telegram from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated September 5, 1934. I object to the introduction of this material on the ground that it relates to a request that Mr. Smith approve Mr. Treanor's personal telegram to Dr. Morgan. It is therefore irrelevant and immaterial
5588 and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-12m is a copy of a telegram from John Treanor of Riverside, to Blaine Smith of Penn-Dixie, dated September 5, 1934. I object to the introduction of this material on the ground that it relates to the personal nature of Treanor's telegram to Dr. Morgan. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I further object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence.

Exhibit No. 562-12n is a carbon copy of a letter from John Treanor to Blaine Smith dated September 6, 1934, purporting to enclose a copy of Treanor's telegram to Morgan. I object to the introduction of this material on the ground that it relates to the personal nature of Mr. Treanor's telegram to Dr. Morgan. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-12x-13t is a letter from Blaine Smith of Penn-Dixie, to John Treanor of Riverside, dated September 14, 1934, enclosing a carbon copy of a memorandum of a meeting of a Committee of Interested Cement com-
5589. panies with TVA on September 6 and 7, at Knoxville, Tennessee. I object to this material which concerns negotiations with an agency of Federal Government. Any resulting agreement with the Government could not be considered in restraint of trade or as bearing on any allegation of the complaint. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit. I further object to the introduction of this material on the ground that it relates to a comparison of the cost at destination of cement produced

by private mills with that of proposed Government mill. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-14h-14i is a carbon copy of a telegram from John Treanor of Riverside to Blaine S. Smith of Penn-Dixie, dated September 19, 1934. I renew my objection that this is N. R. A. Code material. I also object for the reason that it states the personal opinion of the writer and is therefore merely unsworn opinion evidence. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I object to this material which concerns negotiations with an agency of the Federal Government. The resulting agreement with the Government could not be considered in
5590 restraint of trade or as bearing on any allegation of the complaint. Further I object to the introduction of this material on the ground that it relates to Mr. Treanor's impression of Dr. Morgan's telegram to him. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-14v is a telegram from Blaine Smith of Penn-Dixie to John Treanor, of Riverside, dated October 16, 1934. I renew my objection that this is N. R. A. Code material. This telegram is narrative in form and not in furtherance of a conspiracy, therefore it is not admissible against other respondents. I object to the introduction of this material on the ground that it relates to an announcement of results of bids on T. V. A. invitations. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-15b-15d is a letter from Blaine Smith, of Penn-Dixie, to John Treanor, of Riverside, dated October 23, 1934. I object to the introduction of this material on the ground that it relates to the bases of TVA awards and allocation thereof with comments on the joint press release of the TVA and of the interested cement companies. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I
5591 further object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit.

Exhibit No. 562-9o is a carbon copy of a letter from

Blaine S. Smith of Penn-Dixie to members of the Code Authority for Portland Cement Industry, dated April 15, 1935. I renew my objection that this is N. R. A. Code material. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I further object to the introduction of this material, on the ground that it relates to a proposed conference with William Hard. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-9v-9x is a letter from Blaine Smith of Penn-Dixie to John Treanor, of Riverside, dated April 25, 1934, purporting to enclose copy of Smith's letter to Dr. Morgan, dated October 13, 1933, with attachments. I renew my objection that this is N. R. A. Code material. This letter is narrative in form and not in furtherance of a conspiracy. Therefore it is not admissible against other
5592 respondents. I further object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I object to the introduction of this material on the ground that it relates to detailed information on bids for T. V. A. opened on March 19. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-9j is a carbon copy of a letter from John Treanor of Riverside, to Blaine Smith of Penn-Dixie, dated March 1, 1934. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I renew my objection that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I further object to the introduction of this material on the ground that it relates to a summary of Treanor's visit with Dr. Morgan. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-10d is a photostat of mimeographed sheet headed "Cement Situation in Relation to the Tennessee Valley," listing 14 companies, their location
5593 and annual capacities, with a map at bottom of page showing Tennessee River drainage area. I renew my objection that this is N. R. A. Code material. Until this

document has been identified as to source, date and maker it is incompetent. I object to the introducion of this material on the ground that it relates to cement consumption in the Tennessee Valley area. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 562-10c is a photostat of Mallory chart entitled "Cement Capacity, Production and Average Factory Net Price of Portland Cement for United States," 1882-1934. I object to this document which is unidentified as to date. And as to any use to which it may have been put. I object to the introduction of this material on the ground that it relates to a statistical service which is not in issue. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5595 Mr. Leisure: I have already, Your Honor, tendered one group to the reporter, and our objections are specifically outlined under that group.

I would like to take up the second group now, and that has reference to Exhibits offered on pages 5327-40 of the record.

5596 Mr. Leisure: Taking up the second group, I would like to hand to the stenographer a complete list which we have made, identifying the exhibits by exhibit number.

With further reference to these Burns and Clark letters, a large share of this material consists of correspondence relating to the Burns-Clark material. We have already stated our general objections to the introduction of documents of this nature, which are to the effect that they are privileged and that they are irrelevant both as to purpose and subject-matter. The purpose, as I have stated this morning, was not to obtain answers to questions that would give any certain impression or try to support the basing point system. We have handed a brief to the Commission on that subject and quoted from the letter from Mr. Treanor, written at the time, which reads in part:

"The basing point system of marketing as practiced by the cement industry has been criticized as against the best public interest. We want this subject competently and impartially investigated. If a practicable system which better serves the public interest can be found, the industry wants to adopt it. If desirable modifications of the present

system can be suggested, the industry wants to adopt them if they are practicable."

5597 Mr. Leisure: That is the letter of Treanor to Professors Burns and Clark, and I submit they should have been guided by that.

I would like to adopt, also, all of the objections that I have made generally as to this Burns and Clark material so that it will apply to this group of exhibits with the same force and effect as though I had made these objections on the record to each specific individual exhibit.

I wish further to object to the introduction of these papers on the ground that the purpose of the Burns and Clark survey, as distinct from the subject-matter, is likewise irrelevant and immaterial. If the object of the survey was what the Commission apparently contends it to be, namely, to defend the so-called basing point method, then it is no different in principle than the preparation of this case by counsel, and so such material is not per se relevant or material.

There is a general objection which has already been urged by me in connection with all of this material, but which has a particular application here, which should be pointed out. Unauthorized third parties can not

5598 bind these respondents, so the writing of Professors Burns and Clark, who were never authorized to bind the respondents by their statements and actions, should be treated as the writings of any other third party. No supervision was exercised or intended to be exercised over the details of the work of Professors Burns and Clark and they therefore occupy the position of independent contractors rather than that of agents of the Institute. Their declarations are no more binding on members of the industry than are those of their respective counsel made out of court. I, therefore, object to the introduction of any and all papers and letters written by Professors Burns and Clark on the ground that they are neither written by a respondent nor by one authorized to speak for a respondent and are therefore pure hearsay.

Mr. Leisure: I renew all of the objections I have previously made to the admission of the Burns and Clark material and request that they apply specifically to all of the documents offered in this group.

5599 (The exhibits referred to are as follows: 740-D; 958-B and C; 829-T; 836-2U; 577-Y

and Z; 836-2X and 2Y; 836-2V; 836-2W; 836-2R; 836-2P; 836-2N; 836-2-O; 836-2Q; 836-2M; 836-T; 836-2E-2F; 836-2B; 836-L; 836-3V; 836-3S-3U. 836-3P-3R; 730-H-I; 836-3M and 3N; 836-3-O; 576-2P; 576-2-O; 553-2Z-3E; 553-2Y; 553-2X; 950-E; 950-B; 950-I-J; 950-R; 950-P and Q; 821-4X-4Z; 821-5A and 5B; 950-F and G; 950-N and O; 553-X-2C; 882-6W; 882-6X and 6Y; 950-H; 553-3G; 571-A-D; 821-4W; 571-5E and 5F; 950-S-U; 440; 439-A and B; 882-6P and 6Q; 553-3F; 571-5C and 5D; 937-2F; 937-2E; 937-2D; 571-T-2B; 937-2C; 571-R and S; 937-WW-XX; 562-10Q and 10R; 578-6R and 6S; 578-6T; 553-W; 870-15A and 15B; 870-15C-15E; 571-11L-12N; 433; 916-G-J; 434; 435; 436; 437; 571-9K-11K; 938-Y and Z; 958-F and G; 938-A; 553-2N; 950-X and Y; 953-E; 958-M and N; 958-J-L; 958-W; 971-B and C; 953-N; 958-U; 958-V; 953-P; 958-X; 958-Y; 971-28F and 28G; 571-4K; 571-4L; 971-G and H; 958-2P; 971-I; 571-K; 953-W; 956-2S and 2T; 571-4I; 971-J; 571-2Y and 2Z; 953-2R and 2S; 971-S-2R; 971-2T-2X-2Y; 971-2Z-3A; 953-2W; 971-3B and 3C; 953-3I and 3J; 953-3G and 3H; 953-3R; 958-2Q and 2R; 941-S; 5600 571-3A and 3B; 971-3J; 956-3P; 956-3Q-3V; 879-U; 879-T; 879-S; 913-7I; 971-4C; 971-4H; 971-4J; 913-7B and 7C; 562-3R-3V; 971-4-O; 971-4Q and 4R; 971-4S-4U; 971-4V-4X; 915-6T and 6U; 971-5A; 971-5C; 879-Y; 879-X; 562-3Q; 879-W; 817-6G-6I; 971-5D and 5E; 879-V; 971-5Q; 966-H and I; 966-CC; 971-5W; 971-5X; 971-6U and 6V; 971-6W; 971-6X; 971-6Z and 7A; 971-7E; 971-7F and 7G; 971-7L; 971-7M; 965-A and B; 962-C and D; 971-7S and 7T; 971-7Y-8A; 971-8N; 971-29T-29U; 971-9A-9C; 971-9H and 9I; 963-G-Q; 971-9L; 971-9M; 971-9N; 971-9-O; 971-9P; 971-9Q and 9R; 971-10E; 913-6H; 971-29H; 971-31X; 971-32B; 971-10-L-10N; 971-10P and 10Q; 971-10V; 971-10X-11D; 971-30D and 30E; 971-30G and 30-H; 971-29E and 29F; 971-29-G; 971-11G; 971-30I-30K; 971-11L; 971-11N and 11-O; 963-R; 971-11S-11U; 971-11Y; 971-12C-12F; 971-12G and 12H; 971-12I and 12J; 971-12K-12M; 971-30M; 971-30N; 971-13C; 971-30P and 30Q; 971-13D; 971-13H; 971-13J-13L; 971-13R; 963-Z; 963-2A and 2B; 958-3C-3E; 971-14K and 14L; 956-5R; 971-14U-14W; 971-14Z; 971-15A and 15B; 971-15E-15G; 958-3I-3J-3K; 971-31U; 956-14Y and 14Z; 971-16A; 971-16B and 16C; 971-31A; 971-30Z; 956-15C-15E; 562-B-J; 971-31V and 31W; 971-17N and 17-O; 971-17P and 17Q; 971-17T and 17U; 971-32C; 971-32N-32S; 971-17Z and 18A; 971-18F;

971-18I; 971-18M; 971-18X-18Z; 956-18P; 971-19D; 971-19V; 971-20-K-20M; 971-20V; 971-20Z-21B; 958-4A-4I;
5601 971-31Q; 913-4H and 4K; 971-22X; 971-22Y; 971-22Z; 971-23A and 23B; 958-4-O and 4P; 571-2L-2N; 913-3Q and 3R; 571-2-O; 958-4T and 4U; 913-3S; 913-4A-4E; 971-23F and 23G; 971-23I and 23J; 971-23N-23S; 971-23T; 971-23U and 23V; 562-3W and 3X; 971-23W; 971-24E-24G; 971-24H and 24I; 971-24L and 24M; 971-24R; 958-5C and 5D; 968-4W and 4Y and 4Z; 958-5A and 5B; 971-25L; 971-25M-25-O; 971-25P; 971-25Q; 913-2W-2Y; 882-4V; 971-25U-25Y; 971-26A-26F; 971-26H-26L; 971-25E; 971-32U; 971-26R; 889-B-E; 958-5F and 5G; 913-2S and 2T; 887-4S and 4-T; 958-5J and 5K; 958-5L; 958-5M; 958-5N; 888-2L; 971-27A; 971-27B and 27C; 958-5-O; 971-27E; 958-5P; 971-27G and 27H; 971-27K-27N; 913-2L-2M; 913-2D; 419-B; 419-H and I; 971-28D; 971-28H-28K; 971-28L-28N; 419-A; 964-H; 971-28R; 971-28-O; 971-28T; 913-W; 913-V; 958-6H; 971-28Y; 971-29A; 971-29B; 913-D; 971-29D; 913-A; 913-2N; 971-34P; 971-22L-34-O.

5602 Mr. Leisure: The general statement I am making now, Your Honor, is the general group—it does not contain any specific objections. The remainder of the material grouped in this offer is concerned with the relationship of the industry with the general public.

The complaint does allege (paragraph VJ of Count 1) that public advertisements were published and our remedy with regard to material relating to this subject therefore can not be by way of objection. There is, however,
5603 no specific allegation concerning any other activity of the members of the industry with regard to public relations, so that documents tending to prove any other of such matters are irrelevant and immaterial and do not tend to prove any of the issues raised by the pleadings. This proof that a justification of the so-called basing point method was attempted can have no bearing on the issues in this case, nor is the fact that the industry replies to or anticipates a public attack a proper basis from which to infer that the thing attacked is the product of collusion. If the fact that a defense is made is evidence of conspiracy, then the fact that we are defending this case is likewise evidence of the charges in the complaint.

I would like to describe for Your Honor briefly what these public relations activities were and our reasons for

objecting and making the specific objections which we will give to the stenographer covering this group.

Thus, some documents show that the Bureau of Mines wrote to Lehigh asking for the latter's approval of a proposal to publish an official governmental brochure on economic conditions in the industry. Lehigh consulted Lone Star which had also been approached. I object to the introduction of this series of letters as it is not
5604 relevant or material to the issues here involved.

Other proffered exhibits refer to a public attack made upon the industry by Governor Horner; how he carried the fight to the N. R. A. Code hearing in Washington, and how industry considered the necessity of a reply to counteract the unfavorable publicity. This material does not tend to prove any of the issues here involved, and hence is irrelevant and immaterial.

Other exhibits involved discussions had with Bernard Kilgore, editor of the Wall Street Journal. No paid advertisements were involved.

Some exhibits refer to John Treanor's visits to the Federal Trade Commission in an endeavor to interest them in an economic survey of the industry. Other documents refer to copies of a book published at the time of the old cement case, by two college professors, which were offered to executives of various cement companies.

Still other documents refer to appearances by cement company executives before the Senate committee hearing on anti-basing point bill.

Other exhibits deal with an article appearing in Fortune concerning the Lone Star Cement Company. Some also relate to the formation by the Cement Institute of
5605 a Cement Information Bureau for the purpose of supplying information to its employees and to various writers. A speakers bureau and press service bureau were proposed. None of these topics are material or relevant to the issues in this complaint and I think that the mere enumeration of the above instances indicates clearly the irrelevancy of the material contained in this offer.

I think that a mere enumeration of the above instances indicates some of the character of material that is included in this group, which showed clearly that these letters are clearly irrelevant and immaterial in this case.

Mr. Wooden: Your Honor, on some of those points the question is not merely whether respondents indulged in

concerted action to establish and originate the system that they are following, or whether through concerted action they are seeking to maintain it and continue it in existence. Many of those activities that Mr. Leisure has referred to come under that category. They are concerted efforts of respondents to maintain and carry on a system, however it originated.

5606 Mr. Leisure: Now, without taking the time of the hearing to read our specific objections I have here, as we promised Your Honor we would do, listed the specific objections to the group which I have just referred to and I hand them to the stenographer for inclusion in the record.

5607 Mr. Leisure: Commission's Exhibit 740-d, marked for identification, is an original letter from J. S. Young of Lehigh to C. L. Hogan of Lone Star, dated January 28, 1933. I object to the introduction of this document, on the ground that it relates to a request for approval of a Bureau of Mines publication, and is therefore irrelevant and immaterial. I also object to evidence of actions which were done under Government encouragement. In addition, there are unidentified pencil notations on the face of the exhibit.

Exhibit 958 b-c is a copy of a letter from H. C. Koch of Lone Star to L. T. Sunderland of Ash Grove, dated October 3, 1933. This exhibit relates to transactions which occurred during the N. R. A. period, and I therefore object to its introduction for the reasons mentioned in my general statement. Also the transaction in question consists of the industry's attempt to meet the charges of Governor Horner at the N. R. A. Code Hearing, and I submit that this is irrelevant and immaterial. I further object that the writer is stating an opinion as to facts not within his knowledge, to which he could not testify over the objection of the other respondents, and which is in such form as to be of no probative value as against himself. Also, this is a duplicate of Exhibit 585 2-e-b, which is being offered as part of another group.

Exhibit 829-t is an original letter from H. Struckman
5608 of Lone Star to J. S. Young of Lehigh, dated May 1, 1933. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial

and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2-u is an original letter from Chas. F. Conn, as President of the Institute, to J. S. Young of Lehigh, dated August 25, 1933. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 577 y-z is an original letter from J. S. Young of Lehigh to Chas. F. Conn of Giant, dated August 30, 1933, and Exhibit 836 2r is the original letter of Chas. F. Conn, as President of the Institute, in reply, dated September 1, 1933. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2x-y is a copy of a letter from J. S. Young of Lehigh to George F. Coffin of Nazareth, dated August 30, 1933. I renew my objection that this is N. R. A.
5609 Code material. I also object to the introduction of this material, on the ground that it relates to a plan for allocating business under the Code and a proposed price fixing Code provision which was never adopted. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2v is an original letter from Chas. F. Conn, as President of the Institute, to L. T. Sunderland of Ash Grove and J. S. Young of Lehigh, dated August 31, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a proposed NRA Code provision for a price control plan which was never adopted. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2w is a copy of a letter from "J.B." to George F. Coffin of Nazareth, dated September 1, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a proposed price fixing provision of the NRA Code which was never adopted and an allo-

cation plan which was never agreed upon. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. This exhibit is not properly identified.

Exhibit 836 2p is a telegram from L. T. Sunderland
5610 of Ash Grove to J. S. Young of Lehigh, dated Sep-
tember 5, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a proposed price fixing plan of the NRA Code which was never adopted and to a reply to Governor Horner. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2m, o and q, are telegrams between J. S. Young of Lehigh and L. T. Sunderland of Ash Grove, dated September 7-9, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to the Code hearings. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 i-t is a copy of a letter from B. F. Affleck of Universal Atlas to Chas. F. Conf of Giant, *et al.*, dated September 18, 1933. I renew my objection that this is NRA material. I also object to the introduction of this material, on the ground that it relates to Code hearings. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2e-f is an original letter from A. J. R. Curtis of the Portland Cement Association to J. S. Young of Lehigh, dated September 20, 1933. Unidentified pencil
notations appear on the face of the exhibit. I renew
5611 my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 2b is an original letter from C. B. Condon of Hawkeye to J. S. Young of Lehigh, dated September 22, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a Code hearing. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 1L is a copy of a letter from J. S. Young of Lehigh to B. F. Affleck of Universal Atlas, dated September 23, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a Code hearing. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 3v is an original letter from A. J. R. Curtis of the Portland Cement Association to J. S. Young of Lehigh, dated September 25, 1933. I renew my objection that this is NRA Code Material. The letter is written by a non-respondent and I object to its introduction, on the ground that it is hearsay. It is therefore irrelevant
5612 and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 3s-u is a copy of a letter from J. S. Young of Lehigh to A. J. R. Curtis of the Portland Cement Association, dated September 29, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to Governer Horner's charges and delivered prices. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 836 3p-r is an original letter from M. A. Berns of Universal Atlas to J. S. Young of Lehigh, dated October 4, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 730 h-i is a photostatic copy of a letter from A. J. R. Curtis of the Portland Cement Association to J. S. Young of Lehigh, dated October 7, 1933. I renew my objection that this is NRA Code material. I object to this, on the ground that it is written by a non-respondent. I also object to the introduction of this material, on the ground that it relates to Governor Horner's charges. It is therefore irrelevant and immaterial and does not
5613 tend to prove any of the allegations of the complaint.

Exhibit 836 3m-o is an original letter from M. A. Berns of Universal Atlas to J. S. Young of Lehigh, dated October 27, 1933, and an enclosure. I renew my objection

that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a defense of the basing point method. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 576 2p is a photostatic copy of a letter from Blaine Smith of Penn-Dixie to M. A. Berns of Universal Atlas, dated January 13, 1934. I renew my objection that is NRA Code material. I also object to the introduction of this material, on the ground that it relates to a defense of the basing point method. It is therefore irrelevant, immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 576 2o is a copy of a letter from M. A. Berns of Universal Atlas to Blaine Smith of Penn-Dixie, dated January 16, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to T.V.A. and also to a defense of the basing point method. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint, I submit that
5614 the writer is stating facts not shown to be within his knowledge, and I particularly call your Honor's attention to the first two paragraphs. The facts set forth in this letter are hearsay, and, therefore, I object to the admission of this letter.

Exhibit 553 2x-3e is a photostatic copy of a letter from John Treanor of Riverside to B. F. Affleck of Universal Atlas, dated March 7, 1934, enclosing copy of Treanor's letter to Bernard Kilgore of the Wall Street Journal, dated March 5, 1934, and an ostensible reply of Afileck dated March 12, 1934. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it relates to a defense of the basing point method. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 950 e is an original letter to the Public Relations Committee from B. F. Affleck as Chairman. I renew my objection that this is NRA Code material.

Exhibit 950 i-j is a copy of an ostensible circular letter dated March 21, 1934, from the Public Relations Commit

tee. I renew my objection that this is NRA Code material. I also object that this is a draft and has not been shown to have been circulated.

5615 Exhibit 950 r is a copy of a letter from Adam L. Beck of Great Lakes to B. F. Affleck as Chairman of the Committee on Public Relations, dated March 22, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. I also submit that the proposal was never carried out.

Exhibit 950 p-q is a copy of a letter from W. A. Davis of Standard to B. F. Affleck as Chairman of the Committee on Public Relations, dated March 24, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. I also submit that the proposal has not been shown to have been carried out.

Exhibit 821 4x-z is a copy of a letter from A. P. Meyer of Green Bag of Pennsylvania to B. F. Affleck as Chairman of the Committee on Public Relations, dated March 24, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. I also submit that the proposal has not been shown to have been carried out.

Exhibit 821 5a-b is a copy of a letter from W. D. Cloos of Edison to B. F. Affleck as Chairman of the Committee on Public Relations, dated March 26, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the
5616 writer. I also submit that the proposal has not been shown to have been carried out.

Exhibit 950 f-g is a copy of a letter from the Public Relations Committee to the industry, dated March 26, 1934. I renew my objection that this is NRA Code material. This appears to be a draft. There is no addressee and the letter is not shown to have been sent out. It was submitted by Nazareth, and Mr. Coffin was a member of the committee.

Exhibit 950 n-o is a copy of a letter from George A. Nicholson of National to B. F. Affleck as Chairman of the Committee on Public Relations, dated March 28, 1934. I renew my objection that this is NRA Code material. I also submit that the proposal was never adopted.

Exhibit 553 x-2c is a copy of a letter from C. L. Hogan

of Lone Star to B. F. Affleck, as Chairman of the Committee on Public Relations, dated March 29, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. I also submit that the proposal has not been shown to have been adopted.

Exhibit 882 6w is a copy of a letter from B. F. Affleck, as Chairman of the Committee on Public Relations, to George F. Coffin of Nazareth, dated March 29, 1934. I renew my objection that this is NRA Code material.

Exhibit 882 6x-y is an original circular letter from
5617 the Public Relations Committee, dated March 29, 1934. I renew my objection that this is NRA Code material.

Exhibit 950 h is a copy of an ostensible circular letter from the Public Relations Committee, dated April 2, 1934. I renew my objection that this is NRA Code material. This is a draft and has not been shown to have been sent.

Exhibit 553 3g is a photostatic copy of a letter from John Treanor of Riverside to B. F. Affleck of Universal Atlas, dated April 4, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material on the ground that it relates to a discussion with Bernard Kilgore of the Wall Street Journal. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 571 a-d is a copy of a letter from John Treanor of Riverside to Bernard Kilgore of the Wall Street Journal, dated April 4, 1934. I renew my objections that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit. I also object that the letter states the writer's opinion and political philosophy.

Exhibit 821 4w is a copy of a letter from Albert Moyer of Vulcanite to B. F. Affleck, as Chairman of the Committee on Public Relations, dated April 4, 1934. I renew my objection that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit.
5618 Exhibit 571 5e-f is a copy of a letter from F. C. McKee of West Penn to B. F. Affleck, as Chairman of the Committee on Public Relations, dated April 7, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. I also submit that the proposal has not been

shown to have been adopted. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 950 s-u is a copy of a letter from F. R. Kanengeiser of Superior Cement Company to B. F. Affleck, as Chairman of the Committee on Public Relations, dated April 7, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. The proposal was never adopted. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 440 is a photostatic copy of a letter from B. F. Affleck, as Chairman of the Committee on Public Relations to Blaine Smith of Penn-Dixie, dated April 10, 1934. I renew my objection that this is NRA Code material.

Exhibit 439 a-b is a copy of an ostensible circular letter from the Public Relations Committee. This is a draft and has not been shown to have been sent.

Exhibit 882 6p-q is a copy of a letter from A. P. Meyer of Green Bag of Pennsylvania to B. F. Affleck, as Chairman of the Committee on Public Relations, dated
5619 April 11, 1934. I renew my objection that this is NRA Code material. I object for the reason that it states the personal opinion of the writer. This has no tendency to prove the issues. It shows opposition to the public relations plans.

Exhibit 553 3f is a copy of a letter from Blaine Smith of Penn-Dixie to John Treanor of Riverside, dated April 13, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to discussions with Bernard Kilgore of the Wall Street Journal. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 571 5c-d is a copy of a letter from Charles Hornor of Kosmos to B. F. Affleck of Universal Atlas, dated April 13, 1934. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I also object for the reason that it states the personal opinion of the writer. The proposal has not been shown to have been adopted.

Exhibit 937 2d-2f is a telegram from A.J.R. Curtis of the Portland Cement Association to Blaine Smith of Penn-Dixie, dated April 26, 1934, and a telegraphic reply of even date. There is also a photostatic copy of a letter

from Curtis to Smith dated April 27, 1934. I renew my objection that this is NRA Code material. I object
5620 to the introduction of this material, on the ground that it relates to T.V.A. ads which were never published. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Also 2d and 2f are from a non-respondent.

Exhibit 571 1T-2b is a copy of a letter from Edward J. Mehren of the Portland Cement Association to Dr. Elwood Mead of the U. S. Reclamation Service, dated April 28, 1934. I renew my objection that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit. The letter passed between third parties. I object for the reason that it states the personal opinion of the writer. For example, I call your Honor's attention to page 3, paragraph 3. The writer states that he is a research man and is not qualified with regard to marketing questions.

Exhibit 937 2c is a copy of a letter from Blaine Smith of Penn-Dixie to A.J.R. Curtis of the Portland Cement Association, dated April 30, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to T.V.A. ads which were never used. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 571 r-s is a copy of a letter from John Treanor of Riverside to B. H. Rader, as Regional Manager
5621 of the Cement Institute, dated May 17, 1934. This is the "Treanor letter" which has already been received as F.T.C. Exhibit No. 7.

Exhibit 937 2w-2x is a photostatic copy of a letter from W. S. Mallory of the Cement Institute to John Treanor of Riverside, dated June 18, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to material for the letter written by Treanor to Commissioner Ferguson in connection with negotiations with the Commission on the cement industry. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. It has not been shown that the suggestions were used.

Exhibit 562 10q-r is a copy of a letter from G. A. Beckett of Riverside to D. S. MacBride of Lone Star, dated June 19, 1934. I renew my objection that this is NRA

Code material. I object to the introduction of this material, on the ground that it relates to negotiations with the F.T.C. and T.V.A. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 578 6r-s is a copy of a letter from Blaine
5622 Smith of Penn-Dixie to John Treanor of Riverside, dated June 20, 1934. Copies were forwarded to industry men. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to the Ferguson letter. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. The proposal has not been shown to have been adopted.

Exhibit 578 6t is a copy of a night letter from J. S. Young of Lehigh to John Treanor of Riverside, dated June 21, 1934. I renew my objection that this is NRA Code material. I also object to the introduction of this material, on the ground that it relates to the Ferguson letter. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. The proposal has not been shown to have been adopted.

Exhibit 870 15a-b is an original letter from John Treanor of Riverside to Chas. F. Conn of Giant, dated July 2, 1934. I renew my objection that this is NRA Code material. I object to the introduction of this material,
5623 on the ground that it relates to negotiations with the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that it states the personal opinion of the writer.

Exhibit 870 15c-e is a copy of a letter from John Treanor of Riverside to Colonel Donovan, dated July 2, 1934. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it relates to negotiations with the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 571 9k; 12k and 12m-n consists of copies of letters from John Treanor of Riverside to Garland S. Ferguson of the Federal Trade Commission, dated June 23, 1934, and July 17, 1934, which were circularized among the members of the industry, July 25, 1934. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to
5624 prove any of the allegations of the complaint. I also object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 433 is a photostatic copy of a letter from M. A. Berns of Universal Atlas to Blaine Smith of Penn-Dixie, dated July 18, 1934. I renew my objection that this is NRA Code material.

5625 The next Exhibit is apparently 916 g-k, and is a copy of a circular letter from the Public Relations Committee enclosing reproductions of the first three Institute advertisements, an order blank and a notice to be posted for employees. There is one unlettered page. I renew my objection that this is N.R.A. Code material.

Exhibits 434, 435, 436 and 437. These four sheets are copies of the first four Institute advertisements. I renew my objection that this is N.R.A. Code material. This is a duplication of 916 G, et seq, except that the latter stated that the ads appear in four periodicals, whereas this exhibit merely designates them as being Institute advertisements.

Exhibits 938 y-z and 958 f-g are an original and a copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated July 29, 1934. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it relates to negotiations with the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. They are duplicates.

Exhibit 938 2a is a copy of a letter from John Treanor of Riverside to Edward J. Mehren of the Portland
5626 Cement Association, dated July 21, 1934. I renew my objection that this is N.R.A. material. I also

object for the reason that it states the personal opinion of the writer.

Exhibit 553 2n is a photostatic copy of a letter from H. C. Lundborg of the Cement Institute to B. F. Affleck of Universal Atlas, dated September 4, 1934. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it relates to comments of Olympic Portland Cement re Fetter's Book. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Also, Olympic is a non-respondent.

Exhibit 950 xy is an original letter from B. F. Affleck, as Chairman of the Cement Information Committee, to George F. Coffin of Nazareth, dated September 17, 1934. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it relates to activities of the Cement Information Bureau, which are not within the issues. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 953 e is a telegram from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated October 2, 1934. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this
5627 material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 m-n is a copy of a letter from John Treanor of Riverside to Garland S. Ferguson of the Federal Trade Commission, dated October 3, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 958 j-l is an original letter from John Treanor of Riverside to Charles F. Conn, as President of the Institute, dated October 5, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of

the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 w is a copy of a letter from Garland S. Ferguson of the Federal Trade Commission to John Treanor of Riverside, dated October 5, 1934. I renew my ob-
5628 jection that this is N. R. A. Code material. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. The letter is written by a non-respondent, who is also a member of the Commission.

Exhibit 971 b-c is an original letter from John Treanor to Riverside to Dr. A. R. Burns and Dr. J. M. Clark, dated October 6, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates merely to the addressee's employment. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 953 n is a copy of a letter from John Treanor of Riverside to Dr. A. R. Burns and Dr. J. M. Clark, dated October 6, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the purpose of the Burns and Clark survey. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 958u is an original letter from John Treanor of Riverside to Charles F. Conn, as President of the Institute, dated October 6, 1934, with attached slip bearing
5629 typed initials of Blaine Smith of Penn-Dixie. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the purpose of the Burns and Clark survey. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. The attached slip has no apparent connection with the letter.

Exhibit 958 v is an original letter from John Treanor of Riverside to Charles F. Conn, as President of the Institute, dated October 6, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the pur-

pose of the Burns and Clark survey. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 953 p is a copy of a letter from John Treanor of Riverside to Dr. A. R. Burns and Dr. J. M. Clark, dated October 7, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the purpose of the economic survey by Professors Burns and Clark. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 958 x-y is a copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated
5630 October 7, 1934, enclosing original of a letter to Garland S. Ferguson of the Federal Trade Commission of even date. I renew my objection that this is N. R. A. Code material. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 28f-g is a copy of a letter from W. S. Mallory of the Institute to John Treanor of Riverside, dated October 8, 1934. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 571 4k-1 and Exhibit 971 g-h are an original and a copy of a letter from W. S. Mallory of the Institute to John Treanor of Riverside, dated October 10, 1934. I renew my objection that this is N. R. A. Code material. These letters are duplicates.

Exhibit 958 2p is a copy of a letter from Dr. A. R. Burns to John Treanor of Riverside, dated October 10, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the purposes of the Burns and Clark survey. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object to this, on the ground that it is written by a non-respondent.

5631 Exhibit 971 i is an original letter from John Treanor of Riverside to Professor A. R. Burns, dated October 15, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to arrangements for the Burns and Clark survey. It is therefore irrelevant and immaterial

and does not tend to prove any of the allegations of the complaint.

Exhibit 571 k is a copy of a letter from John Treanor of Riverside to Edward J. Mehren of the Portland Cement Association, dated October 15, 1934. I renew my objection that this is N. R. A. Code material. It is irrelevant and immaterial. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 953 w is an original letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated October 16, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

5632 Exhibit 571 4i is a copy of a letter from W. S. Mallory of the Institute to George F. Coffin of Nazareth, dated October 18, 1934. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971-j is an original letter from W. S. Mallory of the Institute to Dr. A. R. Burns, dated October 20, 1934. I object to the introduction of this material, on the ground that it is a privileged communication. I also renew my objection that this is N. R. A. Code material.

Exhibit 571-2y-z is an original letter from Dr. A. R. Burns to Blaine Smith of Penn-Dixie, dated November 4, 1934. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

I also object to this, on the ground that it is written by
5633 non-respondent.

Exhibit 953-2r-s is a copy of a letter from W. S. Mallory of The Institute of Dr. A. R. Burns, dated November 10, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971-s-2r and 2t-2v is an original letter from

Blaine Smith of Penn-Dixie to Dr. A. R. Burns, dated November 5, 1934, enclosing information compiled by the Committee on elimination of waste in selling of the Portland Cement. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication. The reports are too remote. They run from 1927-1931. They are irrelevant and immaterial.

Exhibit 971 2w-y is a questionnaire on selling costs, dated 1927. I object on the ground of laches. These are summaries prepared by an unidentified person. They amount to argumentation rather than testimony and are a summation of evidence not yet produced.

Exhibit 971 2z-3a is a copy of a letter from Dr. A. R. Burns to W. S. Mallory of The Institute, dated November 13, 1934. I object to the introduction of this material, on the ground that it is a privileged communication. I
5634 renew my objection that this is N. R. A. Code material. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 953 2w is an original letter from W. S. Mallory of the Institute to Blaine Smith of Penn-Dixie, dated November 13, 1934. I renew my objection that this is N. R. A. Code material.

Exhibit 971 3b-c is an original letter from W. S. Mallory of the Institute to Dr. A. R. Burns, dated November 14, 1934. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence.

Exhibit 953 3i-j is an original letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated November 19, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to an investigation by the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 953 3g-h is also an original letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie
5635 of even date. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduc-

tion of this material, on the ground that it relates to negotiations with the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 953 3r is an original letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated November 30, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the confidential nature of the Burns-Clark questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 958 2q-r is an original letter from Blaine Smith of Penn-Dixie to John Treanor, of Riverside, dated December 3, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the Burns-Clark Questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 941 s is an original letter from Blaine Smith of
Penn-Dixie to John Treanor of Riverside, dated De-
5636 cember 3, 1934. I renew my objection that this is
N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to seeking advice of counsel. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 571 3a-b is an original letter from Blaine Smith of Penn-Dixie to John Treanor as Chairman of the Marketing Research Committee, dated January 17, 1935. I renew my objection that this is N. R. A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it relates to the preparation of the Burns-Clark Questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 3j is a copy of a letter from Dr. A. R. Burns to Blaine Smith of Penn-Dixie, dated February 7, 1935. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material, on the ground

that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 956 3p is an original letter from Blaine
5637 Smith of Penn-Dixie to F. M. Coogan, Alpha Portland Cement Co., dated February 8, 1935, enclosing a draft of a Burns and Clark questionnaire. I renew my objection that this is N. R. A. Code material. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 956 3q-v are seven sheets of paper bearing the following heading: "Memo of matters to be discussed with the marketing research committee." This does not represent an actual transaction. It is not a memorandum of what transpired but a program of things to be discussed. There is no proof that the meeting took place or that these things were discussed. I object to this material, on the ground that it is undated and the author is unidentified. I also wish to reserve any further objection until these missing facts are supplied. For example, I wish to reserve the objection that this was written during the Code period and that it was written by a non-respondent.

Exhibit 879 s-u is an original letter from B. F. Affleck, as Chairman of the Cement Information Committee, to C. L. Hogan of Lone Star, dated February 19, 1935, and a copy of the reply dated February 21, 1935. Also an original letter from Colonel John B. Reynolds of the In-
stitute to D. Selling of International, dated Febru-
5638 ary 25, 1935. I renew my objection that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it relates to a request for copies of a book written at the time of the old Cement case. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913 7i is an original letter from Dr. A. R. Burns to J. S. Young of Lehigh, dated February 21, 1935. I renew my objections that this is N.R.A. Code material. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 971 4c is an original letter from D. S. Browder of Penn-Dixie to Dr. A. R. Burns, dated March 6, 1935. I renew my objection that this is N.R.A. Code material.

I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 4h is a copy of a letter from Dr. A. R. Burns to Blaine Smith of Penn-Dixie, dated March 14, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 971 4j is an original letter from Charles
5639 F. Conn of Giant to Dr. A. R. Burns, March 18, 1935.

I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence.

Exhibit 913 7b-c is an original letter from Dr. A. R. Burns to J. S. Young of Lehigh, dated March 19, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I object to this on the ground that it is written by a non-respondent. I also object to the introduction of this material, on the ground that it relates to the form and character of the Burns and Clark Questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 562 3r, is an original letter from D. S. Browder of Penn-Dixie to John Treanor of Riverside, dated March 20, 1935. I renew my objection that this is N.R.A. Code material.

Exhibit 562 3s-y are maps of arbitrary price zones in Los Angeles port areas prevailing from January, 1925 to July 1930. I object to the introduction of this material,
on the ground that it is a privileged communication.
5640 I object on the ground of laches. I also object to the introduction of this material, on the ground that it relates to arbitrary price areas which have not been shown to be instituted to meet imports or otherwise relevant. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 4o is a copy of a letter from Dr. A. R. Burns to D. S. Browder of Penn-Dixie, dated March 20, 1935. I renew my objection that this is N.R.A. Code ma-

terial. I object to the introduction of this material on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit. I also object to this on the ground that it is written by a non-respondent.

Exhibit 971 4q-r is an original letter from J. S. Young of Lehigh to Dr. A. R. Burns, dated March 21, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit. Furthermore, the writer admittedly states his personal opinion, and I object on that ground.

Exhibit 971 4s-u is an original letter from J. S. Young of Lehigh to Dr. A. R. Burns, dated March 22, 1935. I renew my objection that this is N.R.A. Code mate-
5641 rial. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit. I also object to the introduction of this material, on the ground that it relates to nets in excess of price bases. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 4y-x is an original letter from D. S. Browder of Penn-Dixie to Dr. A. R. Burns, dated March 23, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 913 6t-u is an original letter from Dr. A. R. Burns to J. S. Young of Lehigh, dated March 25, 1935. I renew my objection that this is N.R.A. Code material. I object to this on the ground that it is written by a non-respondent. I also object to the introduction of this material, on the ground that it relates to the form of the Burns-Clark Questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 5a is an original letter from D. S. Browder of Penn-Dixie to Dr. A. R. Burns, dated March 28,
5642 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 5c is an original letter from D. S. Browder of Penn-Dixie to Dr. A. R. Burns, dated March 29, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 965 a-b is an original letter from Dr. A. R. Burns to North American Cement Corporation. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 879 x-y is a copy of a letter from C. L. Hogan of Lone Star to B. F. Affleck of Universal Atlas, dated April 2, 1935, enclosing an original letter from L. G. McConnell of Lone Star to C. L. Hogan of Lone Star, dated April 1, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged com-
5643 munication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 562 3q is a copy of a letter from Warren H. Leonard of Riverside to D. S. Browder of Penn-Dixie, dated April 4, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 879 w is an original letter from B. F. Affleck of Universal Atlas to C. L. Hogan of Lone Star, dated April 9, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it relates to the publication of an article in Fortune Magazine. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 817 6g-i is a copy of a circular letter from the Marketing Research Committee, dated April 13, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it relates to forwarding the Burns-Clark Questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 5d-e is an original letter from Henry S.

Gray of Louisville to Dr. A. R. Burns, dated April
5644 16, 1935. I renew my objection that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it is a privileged communication. This letter passed between third parties and cannot bind the respondents.

Exhibit 879 v is a copy of a letter from C. L. Hogan of Lone Star to B. F. Affleck of Universal Atlas, dated April 18, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it relates to the "Fortune" article. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 5q is a copy of a letter from Dr. A. R. Burns to Blaine Smith of Penn Dixie, dated April 24, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I object to the introduction of this material, on the ground that it relates to cooperation with the Federal Trade Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object to this on the ground that it is written by a non-respondent.

5645 Exhibit 966 h-i is a copy of a letter from George F. Coffin, as President of the Institute, to D. L. Carpenter of Beaver. I renew my objection that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it relates to fostering cooperation with Burns and Clark. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 966 cc is a copy of a telegram from the San Antonio Portland Cement Co. to George F. Coffin, as President of the Institute. This is undated but the body contains statements which indicate that it was sent in May, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 971 5w is an original letter from John Treanor

of Riverside to Dr. A. R. Burns, dated May 1, 1935. I renew my objection that this is N.R.A. Code ma-
5646 terial. I also object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 5x is a copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated May 1, 1935. I renew my objection that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit. I also object to the introduction of this material, on the ground that it relates to negotiations with the Commission. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 6u-v is a copy of a letter from Dr. A. R. Burns to F. A. Weibel of Allentown, dated May 8, 1935. I renew my objection that this is NRA Code material. Unidentified pencil notations appear on the face of the exhibit. This letter passed between third parties, and cannot bind the respondents.

Exhibit 971 6w is a copy of a letter from Dr. A. R. Burns to W. R. Blair of Southwestern, dated May 8, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this material,
5647 on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent.

Exhibit 971 6x is a copy of a letter from Dr. A. R. Burns to D. S. Browder of Penn-Dixie, dated May 8, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 971 6z-7a is a copy of a letter from Dr. A. R. Burns to Giant Portland Cement Company, dated May 8, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also

object to this, on the ground that it is written by a non-respondent.

Exhibit 971 7e is a copy of a letter from Dr. A. R. Burns to W. R. Blair of Southwestern, dated May 14, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent.

The next Exhibit is lettered 971 7f & 971 7g, but
5648 apparently this is 971 7f-g. It is an original letter from W. R. Blair of Southwestern to Dr. A. R. Burns, dated May 14, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent.

Exhibit 971 7L is a copy of a letter from Dr. A. R. Burns to Wabash Portland Cement Company, dated May 14, 1935. I renew my objection that this is NRA Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent. Furthermore, the writer purports to state what was told him. I object to this as piling hearsay upon hearsay.

5649 Exhibit 971 7m is a copy of a letter from Dr. A. R. Burns to G. S. Warren of Southwestern, dated May 14, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent. Furthermore, the writer is stating facts not within his knowledge, and I object to this as piling hearsay upon hearsay.

Exhibit 962 c-d is an original letter from Dr. A. R. Burns to Kosmos Portland Cement Company, dated May 14, 1935. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 7s-t is an original letter from John J. Porter of North American to Dr. A. R. Burns, dated May 16, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 7y-8a is an original letter from S. N.
5650 Peters of Giant to Dr. A. R. Burns, dated May 17, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 8n is an original letter from B. Cowden of Southern States to Dr. A. R. Burns, dated May 21, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 29t-u is a copy of a letter from Dr. A. R. Burns to John Treanor of Riverside, dated May 23, 1935. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent.

Exhibit 971 9a-c is an original letter from Charles H. Noble of Hercules to Dr. A. R. Burns, dated May 23, 1935. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 9h-i is an original letter from W. R. Couse of Yosemite to Dr. A. R. Burns, dated May 24, 1935. I renew my objection that this is N.R.A. Code material.
5651 I also object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 963g is an original letter from Dr. A. R. Burns to Lone Star Cement Corporation, dated May 25, 1935. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-resident.

Exhibit 963 h-q are special Lone Star Cement Corporation Questionnaires, dated May 25, 1935. I renew my ob-

jection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that they are privileged communications. There is some unidentified handwriting on "M" purporting to answer questions, and I object to its introduction. Questions were sent to non-respondents and are admissible only to characterize the reply.

Exhibit 971 9L-r are special Lone Star Cement Corporation Questionnaires, dated May 25, 1935. I renew my objection that this is N.R.A. Code material. I also object to the introduction of this material, on the ground that they are privileged communications. Questions were sent by non-respondents and are admissible only to characterize the reply. "9M" is a blank questionnaire form which was not filled out by the respondents. Unidentified pencil
5652 notations appear on the face of the exhibit. Also, the exhibit is the same as the one immediately preceding and the admission of both would only serve to encumber the record.

Exhibits 971 10e & 913 6h are the original and copy of a letter from Dr. A. R. Burns to J. S. Young of Lehigh, dated May 28, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a non-respondent. It states facts not within the knowledge of the writer, and I object to this as piling hearsay upon hearsay. Unidentified pencil notations appear on the face of the exhibit. Furthermore, I point out to your Honor that these are duplicates.

Exhibit 971 29h is a copy of a letter from Dr. A. R. Burns to Marquette Cement Manufacturing Company. It is undated but was probably written on May 28, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to this on the ground that it is written by a non-respondent. It states facts not within the knowledge of the writer, and I object to this as piling heasay upon hearsay. I also object to the introduction of this material, on the ground that it is a privileged communication.

5653 Exhibit 971 31x is a copy of a letter from Dr. A. R. Burns to Universal Atlas Cement Company, dated May 28, 1935. I renew my objection that this relates to the interim period immediately after the Schechter deci-

sion. I object to this on the ground that it is written by a non-respondent. It states facts not within the knowledge of the writer, and I object to this as piling hearsay upon hearsay. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 10L-n is an original letter from T. K. Partridge of Southwestern to Dr. A. R. Burns, dated May 31, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. I also object to the introduction of this material, on the ground that it is a privileged communication.

5654 Exhibit 971 10p-q is a copy of a letter from Dr. A. R. Burns to Roy M. Raff of Diamond, dated June 3, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to this on the ground that it is written by a non-respondent.

Exhibit 971 10v is a copy of a letter from Dr. A. R. Burns to A. B. Pfeifer of Medusa, dated June 3, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to this on the ground that it is written by a non-respondent.

Exhibits 971 10x-11d and 971 30d-e are answers of Medusa Portland Cement Company to a special Questionnaire, dated June 3, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. The questions were asked by a non-respondent, and are admissible only to characterize the reply.

Exhibit 971 30g-h is an original letter from F. M. Coogan of Alpha to Dr. A. R. Burns, dated June 4, 1935.

5655 I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 29c is a memorandum headed "Mill #495—Metaline Falls, Washington." I object to the introduc-

tion of this material, on the ground that it is a privileged communication. I renew my objection that this was written during the Code or interim periods.

Exhibit 971 29f is a second sheet of an original letter, signed by D. S. Browder of Penn-Dixie. The letter indicates that it was written after the first quarter of 1936. I object to this as being incomplete. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 29g is a third sheet of an original letter to Dr. A. R. Burns, signed by F. M. Coogan of Alpha. It is undated. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

5656 Exhibit 971 11g is a copy of a letter from Dr. A. R. Burns to L. C. Letzkus of Pittsburgh Plate Glass, dated June 4, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I further object to the introduction of this material, on the ground that it is a privileged communication. I also object to this on the ground that it is written by a nonrespondent.

Exhibit 971 30i-k is an original letter from F. A. Weibel of Allentown to Dr. A. R. Burns, dated June 5, 1935. This letter passed between third parties, and cannot bind respondents. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 11L is a copy of a letter from Dr. A. R. Burns to Santa Cruz Portland Cement Company, dated June 5, 1935. I object to this on the ground that it is written by a non-respondent. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 11 n-o is a copy of a letter from A. R. Burns to W. R. Couse, of Yosemite, dated June 5, 1935. I
5657 object to this on the ground that it is written by a non-respondent. I renew my objection that this re-

lates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication.

Exhibit 963 r-s is a copy of a letter from J. M. Clark to G. H. Reiter, of the Institute, dated June 5, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to this on the ground that it is written by a non-respondent.

Exhibit 971 11s-u is a copy of a letter from A. R. Burns to Oregon Portland Cement Company, dated June 6, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. I object to this on the ground that it is written by a non-respondent.

Exhibit 971 11y is a copy of a letter from A. R. Burns to Superior Cement Corporation, dated June 8, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after
5658 the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. I object to this on the ground that it is written by a non-respondent.

Exhibit 971 12 c-f is an original letter from C. A. Luck of Peerless to A. R. Burns, dated June 10, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 12 g-h is an original letter from L. C. Letzkus, of Pittsburgh Plate Glass Company, to A. R. Burns, dated June 11, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 12i-j is an original letter from W. R. Blair of Southwestern to A. R. Burns, dated June 11, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objec-

tion that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 12k-m is an original letter from F. R.
5659 Kanengeiser, of Superior Cement Corporation, to A. R. Burns, dated June 11, 1935. I object to the introduction of this document on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971-30m is a copy of a letter from A. R. Burns to F. A. Weibel of Allentown, dated June 12, 1935. This letter passed between third parties and cannot bind respondents. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971-30n is a copy of a letter from A. R. Burns to Monarch Cement Company, dated June 13, 1935. I object to this on the ground that it is written by a non-respondent. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication.

Exhibit 971-13c is a copy of a draft of the Burns-Clark questionnaire, dated June 15, 1935. This is a draft which was never sent out and I object on the ground that it is written by a non-respondent. I renew my objection that this relates to the interim period immediately after
5660 the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 30-q is an original letter from C. A. Brooke of Monarch to A. R. Burns, dated June 17, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971-13d is a copy of a letter from A. R. Burns to M. V. Ward of Dewey, dated June 17, 1935. I object to this on the ground that it is written by a non-respondent.

I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication.

Exhibit 971-13h is a copy of a letter from A. R. Burns to F. R. Kanengeiser, of Superior Cement Corporation, dated June 19, 1935. I object to this on the ground that it is written by a non-respondent. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communi-
5661 cation.

Exhibit 971 13j-L is an original letter from R. M. Raff of Diamond to A. R. Burns, dated June 20, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication. Unidentified pencil notations appear on the fact of the exhibit. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 971-13r is an original letter from A. B. Pfeifer of Medusa to A. R. Burns, dated June 20, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document on the ground that it is a privileged communication.

Exhibit 963 1z-2b are answers of International to special questionnaire, dated June 22, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. The questions were written by non-respondents and are admissible only to characterize the reply.

Exhibit 958 3c-e is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated June 25, 1935.
5662 I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 14k-L is an original letter from F. R. Kanengeiser, of Superior Cement Corporation, to A. R. Burns, dated June 26, 1935. I object to the introduction of this

material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 956-5r is a copy of a letter from F. M. Coogan, of Alpha, to A. R. Burns, dated June 28, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it is a privileged communication. I object to the introduction of this material on the ground that it relates to an explanation of an answer to the questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 14z-15b is a copy of a letter from Ash Grove to A. R. Burns, dated July 2, 1935. I object to the introduction of this material on the ground that it is a
5663 privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 14u-w is an original letter from J. S. Young of Lehigh to A. R. Burns, dated June 29, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 15e-g is an original letter from Blaine Smith, of Penn-Dixie, to A. R. Burns, dated July 3, 1935. I object to the introduction of this document on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958-3i is a memorandum of "points shown on large base price chart at which no mill is located." I object on the ground that this has not been identified.

Exhibits 958 3j-k, 971 16b-c and 562 i-j are copies of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated July 10, 1935. I object to this on the ground that it
is written by a non-respondent. I renew my objection
5664 that this relates to the interim period immediately after the Schechter decision. I object to the intro-

duction of this material on the ground that it is a privileged communication. I also object on the ground that these are triplicates.

The next exhibit is apparently 971-16a and is a copy of a letter from A. R. Burns to Pacific, dated July 9, 1935. I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971-31u is a copy of a letter from A. R. Burns to F. L. Stone, of Universal-Atlas, dated July 5, 1935. I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 956 14y-z is an original letter from A. R. Burns to F. M. Coogan, of Alpha, dated July 8, 1935. I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

The next exhibit is numbered 791, but is apparently 971 30z-31a. It is an original letter from F. M. Coogan of Alpha to G. S. Brown of Alpha, dated December 1, 1930, with covering rider bearing pencil date of July 15, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 956 15c-e is a copy of a letter from F. M. Coogan of Alpha to A. R. Burns, dated July 15, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 562 b-c is an original letter from Blaine Smith of Penn-Dixie to A. R. Burns, dated July 23, 1935. I object to the introduction of this material on the ground that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 562 e-f is a memorandum entitled "Mortality table—being by average estimated life of various properties in the cement industry." I object to the introduction
of this document on the grounds that it is irrelevant
5666 and immaterial and does not tend to prove any of the allegations of the complaint. I also object that this is unidentified. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 562-d is the third page of a questionnaire, undated. This is a draft and has not been shown to have been sent out, I object on that ground and because it is written by a non-respondent. I also submit that this is a Burns and Clark blank form, the questions not being answered, it also, is incomplete, and I object on these two grounds. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 562 g-h is a copy of a Burns and Clark questionnaire dated July 23, 1935. This is a draft and has not been shown to have been sent out. I object to this on the ground that it is written by a non-respondent. I also submit that this is a blank form and that answers were not made or filled in. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 31v-w is an original letter from O. H. D. Rohwer, of Universal-Atlas, to A. R. Burns, dated
5667 July 26, 1935. I object to the introduction of this document on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 17n-o is an original letter from H. S. Gray, of Louisville, to A. R. Burns. Unidentified pencil notations appear on the face of the exhibit. This letter passed between third parties and is not binding on respondents. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 17p-q is an original letter from F. R. Kanengeiser, of Superior Cement Corporation, to A. R. Burns,

dated July 26, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to the construction of the questionnaire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 17t-u is an original letter from L. J. Hoenig, of Nebraska, to A. R. Burns, dated July 26, 1935.
5668 I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971-32c is the first page ostensibly of an undated letter from A. R. Burns to Blaine Smith, of Penn-Dixie. I object to this on the ground that it is incomplete. I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I object to the introduction of this material on the ground that it relates to discussions regarding the report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 32n-s is the answer of Universal-Atlas to a special questionnaire, dated July 29, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. Also, the questions were written by non-respondents and cannot bind the respondents.

5669 Exhibit No. 971 17z-18a is a copy of a letter from A. R. Burns to F. R. Kanengeiser, Superior Cement Company, dated July 29, 1935. I object to this on the ground that it is written by a non-respondent. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit No. 971 18f is a blank questionnaire, dated July 29, 1935, concerning mill of Universal-Atlas at North-

ampton. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objections that this relates to the interim period immediately after the Schechter decision. This is a blank form not answered by respondent. Without this the questions themselves are not admissible.

Exhibit No. 971 18i is an original letter from Pacific Portland to A. R. Burns, dated July 31, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit No. 971 18m is an original letter from F. 5670 M. Coogan, Alpha Portland Cement Company, to A. R. Burns, dated August 2, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit No. 971 18x-z is a copy of letter from J. M. Clark to John Treanor of Riverside, dated August 7, 1935. I object to the introduction of this material on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to this on the ground that it is written by a non-respondent. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 956 18p is a copy of a letter from F. M. Coogan of Alpha to A. R. Burns, dated August 8, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 19d is a copy of a letter from J. M. Clark to Blaine Smith of Penn-Dixie, dated August 8, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil no-
5671 tations appear on the face of the exhibit.

Exhibit 971 19v is an answer of the Fredonia mill (Consolidated) to questions suggested by its answer to questions 7, 8 and 21. I object to the introduction of this

material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schnechter decision. The questions were written by non-respondents and are admissible only to characterize the reply.

Exhibit 971-20 k-m is an original letter from J. S. Young of Lehigh to A. R. Burns, dated August 16, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it relates to the reduction of price bases during the attempted establishment of the Lehigh dealer service plan which has no probative value with regard to the question of uniformity in price or in dealer relations. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 20v is a copy of a letter from A. R. Burns to Blaine Smith of Penn-Dixie, dated August 19, 5672 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to this, on the ground that it is written by a non-respondent.

Exhibit 971- 20z-21b is an original letter from Blaine Smith of Penn-Dixie to J. M. Clark, dated August 20, 1935. I object for the reason that it states the personal opinion of the writer and is therefor merely unsworn opinion evidence. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 4a-i is a copy of a letter from John Treanor of Riverside to J. M. Clark, dated August 27, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 31q is a copy of a letter from J. M. Clark to John Treanor of Riverside, dated August 30, 1935. I

object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground that it is a privileged communication.
5672a I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 913-4h-k is a copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated September 11, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971-22x is an original letter from John
5673 Treanor of Riverside to A. R. Burns, dated September 11, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object on the ground that it states conclusions of Treanor as to facts not within his knowledge.

Exhibit 971 22y is a copy of a letter from John Treanor of Riverside to J. M. Clark, dated September 11, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 22z is an original letter from E. E. Duque of California to A. R. Burns, dated September 13, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 23a-b of an original letter from W. H. Leonard of Riverside to J. M. Clark, dated Septem-
5674 ber 25, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 40p is a copy of a letter from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated September 27, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material, on the ground that it relates to a proposal of Professor Clark's which was never adopted. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 23t is an original letter from D. S. Browder of Penn-Dixie to A. R. Burns, dated December 5, 1931. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 23f-g is a copy of a letter from A. R. Burns to W. H. Leonard of Riverside, dated October 12, 1935. I object to this, on the ground that it is written by a non-
respondent. I object to the introduction of this mate-
5675 rial, on the ground that it is a priveleged communi-
cation. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 971 23i-j is an original letter from Howard Miller of Consolidated to A. R. Burns. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 23n-s is an original letter from J. S. Young of Lehigh to A. R. Burns, dated October 30, 1935. I object to the introduction of this material, on the ground that it is a privileged communication. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 23u-v is a copy of a letter from A. R. Burns to W. H. Leonard of Riverside, dated December 13, 1935. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground that it is a privileged communication. I re-

new my objection that this relates to the interim period immediately after the Schechter decision.

Exhibits 562 3w-x is a memorandum headed "schedule of truck rates effective January 1, 1936." I object
5676 that this is unsigned and unidentified and I reserve any further objections that may become apparent when these facts are supplied. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 23e is a copy of a letter from A. R. Burns to D. S. Browder of Penn-Dixie, dated January 8, 1936. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 24e-g is an original letter from W. H. Leonard, of Riverside to A. R. Burns, dated February 28, 1936. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 24h-i is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated February 29, 1936. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground that it is a privileged communication. I also object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I object to the introduction of this material, on the ground that it relates to Burns' opinion on the Anti-Basing Point Bill. It is therefore irrelevant
5677 and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 24L-m is a copy of a letter from J. M. Clark to Blaine Smith of Penn-Dixie, dated March 2, 1936. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to the introduction of this material, on the ground that it relates to Clark's opinion on the Anti-Basing Point Bill. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 24r is an original letter from D. S. Browder of Penn-Dixie to A. R. Burns, dated March 5, 1936. I ob-

ject to the introduction of this document, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 5c-d is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated March 9, 1936, enclosing some questions. I object to the introduction of this material, on the ground that it is a privileged communication. I object to this, on the ground that it is written by a non-respondent.

Exhibit 958 4w-5b is an original letter from Blaine Smith, of Penn-Dixie to A. R. Burns, dated March 17, 1936. I object to the introduction of this material, on the ground that it is a privileged communication.

5678 Exhibit 971 25L is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated March 20, 1936. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 971 25m-0 is an original letter from W. H. Leonard, of Riverside to A. R. Burns, dated March 31, 1936. I object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 25p is an original letter from Blaine Smith, of Penn-Dixie to A. R. Burns and J. M. Clark, dated April 4, 1936. I object to the introduction of this material, on the ground that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 25q is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated April 8, 1936. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this document, on the ground that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913 2w-y is an original letter from B. H. Rader, of Lehigh to J. S. Young, of Lehigh, enclosing two
5679 copies of memorandum headed "The Distance of Non-Base Mills from Their Base in Four Selected Months". I object to the introduction of this document, on the grounds that it is irrelevant and immaterial, and

does not tend to prove any of the allegations of the complaint. I submit that this is an inter-office communication, and not binding on other respondents.

Exhibit 882 4v is a copy of a letter from G. H. Reiter, of the Cement Institute, to T. J. McFadden, dated April 16, 1936. I object to the introduction of this document on the grounds that it is privileged communication and is irrelevant and immaterial and does not tend to prove any of the allegatons of the complaint.

Exhibit 971 25u, 26a-f and 26h-L consists of an original letter from D. S. Browder, of Penn-Dixie to A. R. Burns, dated April 22, 1936, enclosing 15 pages of data on port bases. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit, as for example on 26h.

Exhibit 571 2L-m is an original letter from Blaine Smith, of Penn-Dixie to John Treanor, of Riverside, dated October 3, 1935. I object to the introduction of this matter, on the ground that it relates to the purpose of the economic survey. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the
5680 complaint. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object because it states conclusions of respondent, as for example, the fourth paragraph. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 913 3q-r is an original letter from A. R. Burns to J. S. Young, of Lehigh, dated October 5, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material, on the ground that it is a privileged communication. I object to this, on the ground that it is written by a non-respondent. It states facts not within knowledge of writer and I object to this as piling hearsay upon hearsay.

Exhibit 571 2o is an original letter from J. S. Young, of Lehigh to John Treanor, of Riverside, dated October 7, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I object to the introduction of this material, on the ground that it relates to the removal of the causes of the industry. It is therefore irrelevant and immaterial

and does not tend to prove any of the allegations of the complaint. This is also too remote and of no proba-
5681 tive value. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 958 4t-u is a copy of a letter from John Treanor, of Riverside to Blaine Smith, of Penn-Dixie, dated October 7, 1935. I object to the introduction of this material, on the ground that it relates to the influence of the Marketing Research Committee on the report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 913 3s is an original letter from John Treanor, of Riverside to J. S. Young, of Lehigh, dated October 9, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material, on the ground that it relates to certain views of Professor Clark. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913 4a-e is an unaddressed typewritten copy of Lehigh's answer to question 18-B. (According to a pencil notation this was sent from Blaine Smith of Penn-Dixie to John Treanor, of Riverside, by letter dated October 7, 1935.) I object to the introduction of this material, on the ground that it relates to inaccuracies in Federal Trade Commission's report. It is therefore irrelevant
5682 and immaterial and does not tend to prove any of the allegations of the complaint. I also object that this relates to transactions taking place during the Code and interim periods. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 25-e is a holographic letter from Blaine Smith, of Penn-Dixie to A. R. Burns, dated April 28, 1936. I object to the introduction of this material, on the ground that it relates to the Wheeler Committee Hearings. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971-32-u is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated April 29, 1936. I object to the introduction of this material, on the ground that it relates to the Wheeler Committee Hearing. It is

therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5683 Exhibit 971 26r is an original letter from Blaine Smith of Penn-Dixie to A. R. Burns, dated June 3, 1936. I object to the introduction of this material, on the ground that it is a privileged communication. I also submit that the pencil notations, purporting to show the difference in trucking and rail costs, are incompetent until identified.

Exhibit 958 5f-g is an original letter from Blaine Smith of Penn-Dixie to A. R. Burns, dated June 3, 1936. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to the introduction of this material, on the ground that it relates to the total consumption of cement. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913 2s-t is unsigned memoranda, purporting to give consumption figures for the Lehigh Valley and New York Metropolitan areas. I object that this is unidentified. I object to the introduction of this material, on the ground that it is a privileged communication. I also object

5684 to the introduction of this material, on the ground that it relates to the consumption of cement. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 887 4s-t is an original letter from John B. Reynolds, of the Institute to M. A. Berns, of Universal Atlas, dated June 8, 1936. I object to the introduction of this material, on the ground that it relates to the activities of the Cement Information Bureau. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 958 5j-L is a copy of a letter from A. R. Burns to Blaine Smith, of Penn-Dixie, dated June 15, 1936, and enclosed memorandum. I object to the introduction of this material, on the ground that it relates to the form of the final report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 958 5m is an original letter from Blaine Smith, of Penn-Dixie to F. M. Coogan, of Alpha, C. F. Conn, of Giant, and J. S. Young, of Lehigh, dated June 26, 1936.

I object to the introduction of this material, on the ground
that it relates to the progress of the Burns and Clark
5685 report. It is therefore irrelevant and immaterial and
does not tend to prove any of the allegations of the
complaint.

Exhibit 958 5n is an original letter from Blaine Smith, of Penn-Dixie to C. F. Conn, of Grant, dated July 2, 1936. I object to the introduction of this document, on the ground that it relates to the progress of the Burns and Clark report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of complaint.

Exhibit 888 2L is a copy of a letter from J. B. Reynolds, of the Institute, to the Institute Officers and Trustees, dated September 16, 1936. I object to the introduction of this document, on the ground that it relates to the activities of the Cement Information Bureau. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 27a is an original letter from D. S. Browder, of Penn-Dixie to A. R. Burns, dated December 12, 1936. I object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 971 27b-c is a copy of a letter from A. R. Burns to D. S. Browder, of Penn-Dixie, dated December 17, 1936. I object to the introduction of this material, on ground that it is privileged communication. I also object
to this, on the grounds that it is written by a non-
5686 respondent. Unidentified pencil notations appear on
the face of the exhibit.

Exhibit 958 5o is an original letter from Blaine Smith of Universal Atlas, to F. M. Coogan, of Alpha, et al, dated December 22, 1936. I object to the introduction of this material, on the ground that it relates to recommendations of Clark and Burns as to modification of Basing Point System. These were never adopted. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 27e is an original letter from Blaine Smith, of Universal Atlas, to J. M. Clark and A. R. Burns, dated January 20, 1937. I object to the introduction of this document, on the ground that it relates to forwarding a copy of Smith's statement before the Wheeler Committee. It is therefore irrelevant and immaterial and does not tend

to prove any of the allegations of the complaint. I also object to the introduction of this material, on the ground that it is a privileged communication.

Exhibit 958 5p is an original letter from Blaine Smith, as Chairman of the Marketing Research Committee, to John Bowen, of Lehigh, et al, dated January 21, 1937. I object to the introduction of this material, on the ground that it relates to publications by Burns. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5687 Exhibit 971 27g-h is a copy of a letter from A. R. Burns to Blaine Smith, of Universal Atlas, dated February 16, 1937. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to the introduction of this material, on the ground that it relates to arrangements for interviews with manufacturers and dealers regarding trucking. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 27k-n is an original letter from Blaine Smith, of Universal Atlas to A. R. Burns, dated March 2, 1937. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to the introduction of this material, on the ground that it relates to arrangement for interviews re trucking. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibits 913 2L-m and 419 h-i are copies of letters from Blaine Smith, of Universal Atlas, to 16 dealers, dated March 2, 1937. I object to the introduction of this material, on the ground that it relates to arrangements for trucking interviews for Burns and Clark. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also point out that these are substantially duplicates, and object to the admission of both.

5688 Exhibit 913 2d is an original letter from Blaine Smith, as Chairman of the Marketing Research Committee, to Universal Atlas, dated March 2, 1937. I object that the relevancy of this document is not apparent.

Exhibit 419-b is an original letter from Blaine Smith, of Universal Atlas to 11 industry men, dated March 2, 1937. I object to the introduction of this material, on the ground that it relates to arrangements for trucking interviews

for Burns and Clark. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913-a is an original letter to the Marketing Research Committee, from Blaine Smith, as Chairman, dated June 18, 1937. I object to the introduction of this material, on the ground that it relates to the progress of the Burns and Clark report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 28d is a copy of a letter from Blaine Smith, of Universal Atlas, to L. I. MacQueen, of the MacQueen Service, dated March 2, 1937. I object to the introduction of this material, on the ground that it relates to arrangements for trucking interview. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibits 971 28h-n are unsigned memoranda entitled "Estimate of Freight Losses in Districts 1 and 2 5689 Due to Cross Shipments" and "Estimate of Freight Losses in Ohio, Indiana and Illinois." I object that this material is unidentified. I object to the introduction of this material, on the ground that it is privileged communication.

Exhibits 419-a and 964-h are original letters from A. R. Burns to J. A. Rooney, of Huron and J. B. John, of Medusa, dated March 13, 1937. Exhibits 971 28o & r are copies of letters from A. R. Burns to B. W. Calvin, of Aetna and W. A. Davis, of Standard Portland, dated March 13, 1937. The bodies of all these letters are identical. I object to the introduction of this material, on the ground that it relates to arrangements for trucking interview. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object to the introduction of this material, on the ground that it is privileged communication. Unidentified pencil notations appear on the face of the exhibits.

Exhibit 971 28t is an original letter from Blaine Smith, of Universal Atlas, to A. R. Burns, dated March 15, 1937. I object to the introduction of this document, on the ground that it relates to MacQueen's views on trucking. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object

to the introduction of this material, on the ground that it is privileged communication.

5690 Exhibit 913-w is an original letter from Blaine Smith, as Chairman of the Marketing Research Committee, to John Bowen, of Lehigh, *et al.*, dated March 20, 1937. I object to the introduction of this material, on the ground that it relates to MacQueen's views on trucking. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 913-v is a copy of a letter from A. R. Burns to Blaine Smith, of Universal Atlas, dated March 23, 1937. I object to the introduction of this material, on the ground that it relates to the progress of trucking interviews. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object to the introduction of this material, on the ground that it is a privileged communication. I also object to this, on the ground that it is written by a non-respondent.

Exhibit 958 6h is an original letter from Blaine Smith, as Chairman of the Marketing Research Committee, to Universal Atlas, dated March 25, 1937. I object to the introduction of this material, on the ground that it relates to trucking interviews. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 28y is an original letter from D. S. Browder, of Penn Dixie to A. R. Burns, dated April 15, 1937. I object to the introduction of this material, on the ground

5691 that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 971 29a is a copy of a letter from A. R. Burns to D. S. Browder, of Penn Dixie, dated May 13, 1937. I object to the introduction of this document, on the ground that it is a privileged communication. I object to this, on the ground that it is written by a non-respondent.

Exhibit 971 29b is an original letter from D. S. Browder, of Penn Dixie to A. R. Burns, dated May 15, 1937. I object to the introduction of this material, on the ground that it is a privileged communication. Unidentified pencil notations appear on the face of the exhibit.

5692 Exhibits 971 29d and 913-d are copies of letters from A. R. Burns to Blaine Smith, of Universal Atlas, dated May 25, 1937. I object to the introduction of this material, on the ground that it relates to the progress

of the Burns and Clark report. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object to the introduction of this material, on the ground that it is privileged communication. I also object to these, on the ground that they are written by a non-respondent and are duplicates.

Exhibit 913 2n is an original letter to Marketing Research Committee from Blaine Smith, as Chairman, dated August 13, 1937. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 950-b is an ostensible circular letter signed by B. F. Affleck, as Chairman of the Public Relations Committee. The addressee is not disclosed. I renew my objection that this is NRA Code material.

Exhibit 836 2 r is a letter from Charles F. Conn, Vice President of the Institute, to Joseph S. Young of Lehigh, dated July 1, 1933. I renew my objection that this is NRA Code material. I also object to the introduction of this material on the ground that it relates to Governor
5693 Horner's charges and the Code hearing. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 971 331-340 is a pamphlet printed by the Lehigh Portland Cement Company, dated May 1931, entitled, "Twenty Years of Dealer Protection," unaddressed and unsigned. Unidentified pencil notations appear on the face of the exhibit. I also object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I further object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I object to the introduction of this material on the ground that it relates to the individual dealer distribution policy of the Lehigh Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Furthermore, I would like to incorporate all of the objections which I have heretofore made to Burns and Clark material.

Exhibit 971 34p is a map of Southern California, printed by Grayson's unsigned, unaddressed, and undated. I object to the introduction of this document on the ground that it has not been identified as a document. Further-

more, there are many notations in colored pencils which have not been identified as to the maker or as to the
5694 purpose. The accuracy of any facts or circumstances which the map purports to show is subject to question, and I therefore object to this document until the maker identifies and explains the exhibit. In addition, I would like to incorporate all of the objections which I have heretofore made to Burns and Clark material. Since this map purports to show only price zones on the Pacific Coast not instituted to meet importations of foreign cement, but rather to comply with uniform freight rates imposed by the Railroad Commission of the State of California, I object to this document as not being material or relevant and not tending to prove any of the allegations of the complaint.

Your Honor, this concludes our specific objections to the documents offered as a part of this group.

I call your attention to Page 5430 of the Record which shows that, upon reconvening on April 26th, Counsel for the Commission offered Exhibit 971 24v with the statement that it had been omitted from the previous offer.

This is a photostatic copy of a letter from Dr. Burns to Blaine Smith, of Penn Dixie, dated March 16, 1936.

There was no offer of proof other than the statement that it was a letter written by Dr. Burns to Smith. An examination of the body of the letter, however, indicates that it falls within the general subject matter with which this group is concerned.

5695 Consequently, I am treating this letter as a part of the preceding group for the purpose of making objections to this document, with the result that all the objections, raised to the introduction of this group and to the Commission's offer as a whole, will apply to this exhibit.

In addition, I have the following further objections to make. First, the letter was written by a non-respondent; secondly, it relates to the drafting of a statement by Dr. Burns concerning the economic effect of the Basing Point method and the fact that a statement was drawn up which was irrelevant in itself, for reasons I have advanced elsewhere.

The contents of the statements are not set forth, and the statement itself is the best evidence of its own contents. The references in the letter to the contents and

object of the statement represent the opinions of the writer. Moreover, these opinions were reduced to writing at a time when the survey was just commencing and merely represent his views on a highly involved subject before he had an opportunity to reach any final conclusions on this question. I submit that this document should not be introduced into evidence as it has not probative value and is not fair evidence.

5696 Mr. Leisure: The third group which I would like to take up referred to on pages 5340 and 5341 of the record, the offer made at that time read as follows:

"The group of exhibits which have just been offered relate to and reflect the activities of the respondents, the Cement Institute, in price filing and other activities during the Code period and subsequent thereto."

The general objections which I have already made apply to this group but I wish to make the further objection to the introduction of these documents on the ground that they are irrelevant and immaterial:

First: Because the entire subject of open price filing is irrelevant and immaterial. The record shows that an open price plan existed only as a part of the N. R. A. Code for the Cement Industry and for a few months thereafter during the interim period. As an N. R. A. Code activity it was specifically approved by the United States Government. This activity is not mentioned in the complaint and it has in no way been shown to be an essential or actual part of the alleged conspiracy. The theory of the complaint is that producers have agreed to quote uniform prices composed of known price bases and known freight rates. It does not allege that uniformity was

5697 brought about by the distribution of delivered prices, but only by the distribution of the factors which go to make up those prices. Under open price filing, producers were notified of prices quoted at a given mill or destination. Neither the price bases nor the freight rates were filed; therefore, this offer is inconsistent with the theory underlying the complaint.

Second: Because the statistical service of the Institute is not mentioned in the complaint.

Third: Because one of the exhibits offered consists of a balance sheet of the Institute. This is clearly irrelevant and immaterial.

Fourth: Because the minutes of an Institute District

meeting was made the subject of another offer. Among the matters discussed was that of the standardization of the form of the freight rate books as between the two Freight Rate Bureaus. Another topic treated was the distribution of the rate books to Government officials and non-members of the Institute. These questions are too remote to affect the issues raised by the pleadings.

Fifth: Because the exhibits have been introduced concerning the N. R. A. Code period. One of these consists of a proposed draft of the Cement Code. This is irrelevant for the reason that the draft was never adopted
5698 or approved either by the industry or the Government. The fact that the proposal was made by the industry has no bearing on the issues since the N. R. A. clearly contemplated that this procedure would be followed and that industry would take the initiative in submitting codes for governmental approval. This fact, likewise, makes the subject matter of the draft irrelevant in view of the fact that it was never adopted, so that the members of the cement industry never operated thereunder.

I would like to submit specific exhibit numbers to the report to be made part of the record.

(The exhibit numbers submitted are as follows:)

797-W-Z; 828-6T-7H; 847-A-C; 846-2P; 846-2-O; 427-K; 427-L-T; 866-3Z; 855-5I; 877-B; 947-11G; 947-11F; 947-11M and 11N; 855-3N; 947-11T; 947-13C.

Mr. Leisure: I would like also to submit specific objections which we have made to this group.

Other than the objections which I have raised to the Commission's offer as a whole, and those which I have raised to this group, I have no further objection to Commission's Exhibit 797-W-Z, except that it is already in evidence as
Commission's Exhibit 628. I suggest, therefore, that
5699 its offer be withdrawn.

I have the following further objections to the remaining specific documents which go to make up this offer.

Commission's Exhibit 828-6T-7H, inclusive, is a mimeographed copy of the minutes of a meeting of Districts 5, 7 and 8 of The Cement Institute at Chicago, June 23, 1933. This includes a draft of the revised Code of Fair Competition for the Portland Cement Industry.

This exhibit relates to transactions which took place during the N. R. A. period, and more particularly concerns the

drafting of a code of fair competition. I therefore object to its introduction, for the reasons mentioned in my general statement. I also call your Honor's attention to the fact that portions of the printed matter have been crossed out by pencil marks and that pencil notations appear on the face of the exhibit. I object to the introduction of these marks.

Exhibit 847-A-C is a mimeographed letter to the Board of Trustees and officers from H. A. Brown, Institute cashier. The letter is dated December 10, 1937, and encloses a balance sheet as of November 30, 1937, and an income and expense statement for November, 1937. I object to the introduction of this material, on the ground that it is irrelevant
5700 and immaterial, since it is concerned only with the financial position of the Institute. This does not tend to prove any of the issues of the case.

Exhibit 846-2P is a carbon copy of a letter to the Code Authority from W. C. Brownson of North American, dated February 27, 1934. Exhibit 846-2-O is an original letter in reply. I renew my objection that this is N. R. A. Code material, and is irrelevant and immaterial.

Exhibit 427-K is a mimeographed copy of a letter to thirteen companies from B. H. Rader, Chairman, Code Authority, P. C. I., dated April 5, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the distribution of prices filed by the Code Authority, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 427-L-T are mimeographed sheets, headed "California and Nevada Prices," dated April 9, 1934. These are unaddressed and unsigned. This is an unidentified list of prices. There is nothing to indicate who prepared it or whether other respondents received copies of it. I
5701 renew my objection that this is N. R. A. Code material.

Exhibit 866-3Z is a letter to W. C. Brownson of North American, from J. L. Nelson of the Code Authority, P. C. I., dated January 9, 1935. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material, on the ground that it relates to the reply to request for certain prices on file with the Code Author-

ity, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 947-11M-11N is a mimeographed letter to eight companies from G. H. Reiter, Trade Practice Committee, dated October 7, 1935. This exhibit relates to transactions which took place during the interim period after N. R. A., and is just as incompetent as material relating to the Code period proper. I object to the introduction of this material, on the ground that it relates to the distribution of prices filed with the Trade Practice Committee, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 855-5I is a carbon copy of a letter to the Chairman, Trade Practice Committee, from Assistant General Sales Manager, North American, dated September 9, 1935.

I renew my objection that this relates to the interim
5702 period. I also object to the introduction of this material, on the ground that it relates to meeting the filed prices of a competitor, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 877-B is a carbon copy of a letter to the Cement Institute, from E. W. McGovern, Hermitage, dated September 14, 1935. I renew my objection that this relates to the interim period. I also object to the introduction of this material, on the ground that it relates to meeting filed prices of a competitor, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 947-11G is a letter to H. O. Warner, Colorado, from G. H. Reiter, Trade Practice Committee, dated October 1, 1935. Exhibit 947-11F is a carbon copy of a letter from Warner to Reiter dated October 2, 1935. I renew my objection that this relates to the interim period. I also object to the introduction of this material, on the ground that it relates to meeting filed prices of a competitor, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 855-3N is a carbon copy of a letter to the Chair-

man of the Trade Practice Committee, from W. C.
5703 Brownson, North American, dated October 7, 1935. I renew my objection that this relates to the interim. I also object to the introduction of this material, on the ground that it relates to meeting filed prices of a competitor, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 947-11T is a carbon copy of a letter to G. H. Reiter, Trade Practice Committee, from H. O. Warner, dated October 15, 1935. I renew my objection that this relates to the interim period. I also object to the introduction of this material, on the ground that it relates to the filing of a price, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 947-13C is a copy of a telegram to H. O. Warner, Colorado, from the Trade Practice Committee, dated October 22, 1935. I renew my objection that this relates to the interim period. I also object to the introduction of this material, on the ground that it relates to the announcement of price change, and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5704 Mr. Leisure: The fourth group to which I will make our objections was offered on page 5341 of the record by counsel for the Commission.

As to that group counsel made the following offer of proof:

"The last group of exhibits offered deal with contract checking activities of the Cement Institute and its members."

I have already made a number of general objections which apply to this group, but I further object to the
5705 introduction of these exhibits on the ground that they are irrelevant and immaterial. The contract checking service of the Institute is not specifically mentioned in the complaint, nor is this service included in the complaint by implication.

The complaint alleges a conspiracy to restrain competition in price by the use of a so-called basing point system. The reporting on and checking of specific sales contracts already entered into, is not an act in furtherance of a conspiracy to maintain a so-called basing point system but

is designed to prevent fraud on the part of buyers. The same opportunities for fraud would exist regardless of whether delivered prices were quoted, and therefore, such activities with reference to specific sales contracts are not within the issues of this case.

It should be noted that the Supreme Court pointed out in the old Cement Case the use of the contract checking service is distinct from the use of the contract form itself. It further appears that the two have not been coextensive in point of time.

Since the contract checking activities were specifically approved by the Supreme Court in the *Cement Manufacturers Protective Association* v. *U. S.* (268 U. S. 588), and are not contained in the issues raised by the
5706 pleadings.

I respectfully submit the documents in this group are irrelevant and immaterial and would only serve to clutter up the record and burden it and encumber the record in a way that is not justified.

5708 Examiner Norwood: Go ahead.

Mr. Leisure: As to this group 4 which I have already referred to, I will hand the stenographer our specific typewritten objections, together with a list of the specific exhibits referred to.

Specific Objections To Subpoena Material Offered on Record Page 5341.

Other than the objections which I have raised to the Commission's offer as a whole, and also those which apply to this group generally, I have no further objections to:

Commission's Exhibit 799-7p

Commission's Exhibit 799-2L

I have the following further objection to the remaining document which comprises this offer. Exhibit 799-6y is a letter to W. C. Brownsen, North American, from G. H. Reiter, Institute, dated May 11, 1935. I renew my objection that this is N.R.A. Code material. Further, I object to the introduction of this material on the ground that it relates to the refusal of the Institute to advise members on matters of individual company policy. It is therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

The next group is a group designated as Group 5.
5709 The documents under this group were offered by counsel for the Commission on pages 5341-2 of the

record. Counsel made the following offer of proof at that time:

"The group of exhibits which have just been offered for the record relate among other things to the activities of the Cement Institute and its representative members to the work of the Trade Practice Committee and the Cement Institute."

A more accurate description of the documents in this group is that they relate to the open price filing activities which the Institute took over from the N.R.A. Code Authority, during the short period that this function was continued after the end of N.R.A.

There are also some scattered documents which discuss the Compendium of Established Terms and Marketing Methods.

I have already made certain objections which apply to this group, but I wish to enter the further objections to the introduction of this material that it relates to transactions which occurred during the twilight period which followed the Schechter decision, and before it became apparent that the promised revival of N.R.A. would not materialize.

I further object to the introduction of any papers which deal with open price filing. This entire sub-
5710 ject is irrelevant and immaterial and not with the issues prescribed by the pleadings in this case:

First, because this issue is not raised by the complaint;

Second, because the entire subject of open price filing is irrelevant and immaterial. The record shows that an open price plan existed only as a part of the N.R.A. Code for the cement industry and for a few months thereafter during the interim period. As an N.R.A. Code Authority it was specifically approved by the United States Government. This activity is not mentioned in the complaint and it has in no way been shown to be an essential or actual part of the alleged conspiracy. The theory of the complaint is that producers have agreed to quote uniform prices composed of known price bases and known freight rates. It does not allege that uniformity was brought about by the distribution of delivered prices, but only by the distribution of the factors which go to make up those prices. Under open price filing, producers were notified of prices quoted at a given mill or destination. Neither the price bases nor the freight rates were filed;

therefore, this offer is inconsistent with the theory underlying the complaint;

5711 Third, because open price has in no way been shown to be an actual or essential part of the alleged basing point system. The theory of the complaint is that producers have agreed to quote uniform prices composed of known price bases and known freight rates. It does not allege that uniformity was brought about by or is the result of the distribution of delivered prices. The charge is that it resulted from the distribution of the facts which go to make up those prices. Since under the N.R.A. Code and Trade Practice Committee open price filing producers were notified only of the prices quoted at a given mill or destination, this offer is inconsistent with the theory underlying the complaint.

The record now shows that these activities are no longer carried on by the Trade Practice Committee and have not been since 1935. Since it has not been contended that the Institute is threatening to revive an open price plan, and since the Supreme Court has stated that open price plans are not illegal, it is hard to imagine any reason for encumbering the record with matters not tending to prove any of the issues raised by the pleadings, and for adding exhibits which are merely cumulative in effect.

I will give to the reporter our specific objections to this group, together with the list of exhibits.

5712 (The list of exhibits and the specific objections thereto are as follows:)

425-D; 425-C; 947-10L; 947-10M; 947-10K; 947-10J; 948-D; 879-DDD; 879-BB; 948-F; 948-G; 948-H; 948-H; 948-J; 948-I; 879-WW and XX.

In addition to the objections which I have raised to the Commission's offer as a whole, and those which I have raised to this group of documents, I have some further specific objections.

Exhibit N. 425-D is a letter to A. J. Rooney, Huron Portland Cement Co., from G. H. Reiter, Trade Practice Committee, dated July 3, 1935. I object to this document because it was written during the interim period following the Schechter decision in accordance with the requests of Government officials to continue N.R.A. activities. This can properly play no part in the proof of a conspiracy as charged in the complaint. I object on the ground that it is not shown that anything was done pursuant to the

recommendations of this document. I further object to the introduction of this material, on the ground that it relates to a Trade Practice Committee inquiry as to whether Huron was following a price change in Wisconsin. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5713 Exhibit No. 425-C is a letter to A. J. Rooney of Huron Portland Cement Co. from G. H. Reiter of Trade Practice Committee, dated July 5, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I object to the introduction of this material on the ground that it relates to a Trade Practice Committee inquiry as to whether Huron was following a price change in Indiana. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 947-10L is a carbon copy of a telegram to G. H. Reiter, Trade Practice Committee, from H. O. Warner, Colorado Portland Cement Co., dated August 28, 1935. Exhibit No. 947-10M is a telegram to H. O. Warner, Colorado, from chairman, Trade Practice Committee, dated August 28, 1935, in answer to 947-10L. I renew my objection that these two documents relate to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to a Government destination price filed for Montrose, Colorado. These documents are therefore irrelevant

5714 and immaterial and do not tend to prove any of the allegations of the complaint.

Exhibit No. 947-10K is a carbon copy of a telegram to G. H. Reiter, Trade Practice Committee, from H. O. Warner, Colorado Portland Cement Co., dated August 30, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to the introduction of this material on the ground that it relates to a Trade Practice Committee inquiry as to Government destination costs filed for Montrose, Colorado. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 947-10J is a letter to Colorado Portland

Cement Company, Monolith Portland Midwest Company, from G. H. Reiter, Trade Practice Committee, dated August 30, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to an announcement of change in Government destination costs voluntarily filed with the Trade Practice Committee for Montrose, Colorado. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5715 Exhibit No. 948-1D is a carbon copy of a letter to E. E. Duque, California Portland Cement Company, from G. H. Reiter, Trade Practice Committee, dated September 3, 1935. I object to the introduction of this material on the ground that it relates to a Trade Practice Committee inquiry concerning the addressee's bid on cement for U. S. Bureau of Reclamation which varied from its openly filed price. I renew my objection that this relates to the interim period immediately after the Schechter decision. Furthermore, the document is unintelligible on its face without collateral testimony. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 948-F is a carbon copy of a letter to G. H. Reiter, Trade Practice Committee, from H. O. Warner, Colorado Portland Cement Company, dated September 19, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object to the introduction of this material on the ground that it relates to a Trade Practice Committee inquiry as to prices filed for Grand Junction, Colorado. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5716 Exhibit No. 879-3D is a carbon copy of a letter to G. H. Reiter, Trade Practice Committee, from J. F. Neylan, Lone Star Cement Company, dated September 4, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. It is also irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 948-1G is a carbon copy of letter to G. H.

Reiter, Trade Practice Committee, from H. O. Warner, Colorado Portland Cement Company, dated September 21, 1935, and answer thereto being Exhibit No. 948-J which is a letter to H. O. Warner, Colorado, from G. H. Reiter, Trade Practice Committee, dated September 24, 1935. I renew my objection that these two documents relate to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to a Trade Practice Committee inquiry as to price filed by Colorado for Cheyenne, Wyoming. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 948-I is a carbon copy of letter to G. H. Reiter, Trade Practice Committee, from H. O. War-
5717 ner, Colorado Portland Cement Co., dated September 28, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. Also, I object to the introduction of this material on the ground that it relates to a price voluntarily filed with Trade Practice Committee for Cheyenne, Wyoming. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 948-H is a letter to H. O. Warner, Colorado Portland Cement Co., from G. H. Reiter, Trade Practice Committee, dated September 23, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. Further, I object to the introduction of this material on the ground that it relates to the cancellation of a price filing for Grand Junction, Colorado. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 879-2W-2X is a photostat of a letter to Messrs. Coffin, Coogan, Lucas, Neylan, Storey, Sunderland, Warren, McFadden, from G. H. Reiter, Trade Practice Committee, dated October 25, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit. I object to the in-
5718 troduction of this material on the ground that it relates to recommendations on compendium to be made to trustees by the committee. It does not appear from the record that these recommendations were ever acted upon. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 879-2B is a carbon copy of a letter to Code Authority for the Portland Cement Industry from T. K. Holmes, Yosemite Portland Cement Company, dated June 10, 1935. I must call to your Honor's attention the fact that this letter has already been received in evidence as Commission's Exhibit No. 278-E. The reintroduction of this letter at this time can add nothing to the record as it now stands except confusion and surplusage. Furthermore, I renew my objection that this is N. R. A. Code material. Also I object to the introduction of this material on the ground that it relates to a request for explanation of Code Authority's letter of June 6 on impropriety of terms and conditions filed for California and Nevada. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Further I must object to an unnumbered, unidentified, unauthenticated, unaddressed, unsigned memoran-
5719 dum included with the papers in this group. Written in pencil on Universal Atlas scratch paper are figures and words. The memorandum is incompetent, irrelevant and immaterial on its face for which reasons I object to its admission and I request that counsel for the Commission withdraw the offer of this document.

5720 Mr. Leisure: The next, we have grouped as Group 6. It appears on pages 5342-44 of the record. Approximately half of the material sought to be introduced at this time has no relation whatever to the question of arbitrary price areas and is therefore irrelevant and immaterial according to the very terms of the offer of proof.

Counsel made the following proffer at the time this group was offered:

"The group of exhibits which have just been offered for the record, for the most part deals with price lists which have been published by the respondents, showing special, or to use their term, arbitrary prices at ports and certain correspondence dealing with basing point prices."

We object to them on the ground they are irrelevant and immaterial so far as proving the facts for which they are offered is concerned.

5721 There are nearly 200 documents, however, which are embraced within the scope of the offer. These documents almost without exception, consist of price lists and price correction sheets.

Since the greater part of these comprise a single sheet,

counsel has offered 200 separate documents to prove an obvious fact. Although these documents may be shown to have some relevancy, they do not bear as directly on the issue as we have a right to expect in order for them to be offered in evidence.

I have in my general statement made objections which apply to this group; I would like to make the further objection that all these documents on special prices are cumulative and unnecessary.

5722 Mr. Leisure: I would like to offer at this time the specific objections to this group, your Honor, being Group 6, together with the identification of the specific exhibits.

5723 Examiner Norwood: Let them go in the record.

(The specific exhibits and objections thereto are as follows:)

417-B; 417-A; 417-D; 417-G; 417-F; 417-H and I; 417-J and K; 417-L; 417-M; 417-O; 417-N; 417-P and Q; 417-R and S; 417-V; 417-U; 417-T; 417-W and X; 874-HH; 874-M; 874-L, 874-O; 874-N; 874-S and T; 874-Q; 874-P; 813-X and Y; 947-9L and 9-O; 417-Y; 417-Z; 417-AA to DD; 417-FF; 417-EE; 417-GG; 417-HH; 571-4W; 947-14F; 947-14G; 947-14E; 947-14Y; 417-JJ; 417-II; 947-15E; 418-A to D; 870-13N-13-R; 867-U-Y; 551-J-3N; 870-13B-13D; 418-E and F; 418-G; 922-B-GGG.

Other than the objection which I have raised to the Commission's offer as a whole and also those objections which apply to this group generally I have no further objection to the following exhibits:

Commission's Exhibit 417 b; 417 f-s; 417 w-x, 874-2h; 874 s, t, q, p; 417 2a-2f; 417 2h.

I have the following further objections to individual documents:

Exhibit 417-a is a carbon copy of a letter to Franklin R. Johnson of the Aetna Portland Cement Company, from Huron Portland Cement Company, dated January 4, 1933. There are pencilled initials "E. S." on the document. I

5724 object to the introduction of this material, on the ground that it relates to Mr. Crapo's absence in the South. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 417-d is a letter to A. J. Rooney of Huron Portland Cement Company, from Franklin R. Johnson of Aetna

Portland Cement Company dated April 11, 1933. This document is already in evidence as Commission's Exhibit 19 (b) and I can see no reason for its further introduction at this point, I object to its admission and request that its offer be withdrawn.

Exhibit 417-v is a carbon copy of a letter to F. R. Johnson, from A. J. Rooney of Huron Portland Cement Company, dated September 30, 1933. It refers to newspaper clippings which are not attached and have not been introduced into evidence. Therefore, the document is not complete. I further object on the ground that it is immaterial and irrelevant.

Exhibit 417-u is a letter to A. J. Rooney of Huron Portland Cement Company, from F. R. Johnson, dated October 3, 1933, in answer to Rooney's letter of September 30, 1933. It refers to newspaper clippings which have not been introduced in evidence. I object on the ground that the document is, on its face, immaterial and irrelevant.

5725 Exhibit 417-t is a carbon copy of a letter to F. R. Johnson, from A. J. Rooney of Huron Portland Cement Company, dated October 5, 1933. This document also refers to newspaper clippings which have not been introduced in evidence and I again object on the ground that its materiality and relevancy is not apparent on its face.

The next paper I come to in this group is an undated letter, unaddressed, unsigned pencil memorandum of incomprehensible significance on Ideal scratch paper. I object on the ground that it is not marked, not offered and not identified.

I have here also an unmarked quotation blank of Southwestern Portland Cement Company. I object to the introduction of this document on the grounds that it is not offered, not marked, not identified and not dated.

Exhibit 874-m, l, o, and n is correspondence passing between H. O. Warner of Ideal Portland Cement Company and J. A. Lehaney of Lone Star Cement Corporation, over the period from January 26, 1934 to February 5, 1934. The papers relate to a request by Mr. Lehaney of Mr. Warner for information as to a price for Fort Peck Dam and to discussion of the information given. I renew my objection that this is N. R. A. Code material and

5726 prices were on file with the Code Authority. I also object on the ground that the price given was not bid and, therefore, the documents are not shown to be in furtherance of any conspiracy.

I have here an unmarked pencilled memorandum to A. W. K. from C. D., dated February 5, 1934. It deals with a request for a tariff rate from Mason City to Glasgow, Montana. I object to the introduction of this document into evidence on the ground that it is not identified, not signed, pencilled and not marked.

Exhibit 813-x, y is a mimeographed list of base prices in effect April 1, 1935, dated April 3, 1935. It is unaddressed and is concluded with the mimeographed words "Walter S. Wing, General Sales Manager." Unidentified pencil notations appear on the face of the exhibit. I object that this was during the Code period and that current prices were on file with the Code Authority.

Exhibit 947-9L-9o is a letter to the Colorado Portland Cement Company from S. W. Russell of Monolith, dated June 11, 1935. This letter encloses a Wyoming price list. The information given consists of facts on file with the Trade Practice Committee and, therefore, does not tend to prove any allegations of the complaint.

Exhibit 417-y is a letter to S. T. Crapo of Huron Portland Cement Company from F. R. Johnson of Aetna
5727 Portland Cement Company, dated June 14, 1935. I object for the reason that it does not appear that the conversation, referred to, was to affect any of the issues in the complaint. I further object to the introduction of this document on the grounds that it is irrelevant and immaterial.

Exhibit 417-z is a carbon copy of a letter to F. R. Johnson of Aetna Portland Cement Company, from S. T. Crapo of Huron Portland Cement Company, dated June 21, 1935. I object to this letter because there is nothing to show that conversation, referred to, was to affect any of the issues in the complaint. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 417-2g is a carbon copy of a memorandum, unaddressed and concluded in pencil "from F. R. Johnson." It is dated October 25, 1935 and relates to the distribution of Aetna Portland Cement. It is already in evidence as Commission's Exhibit 34 and I want to renew at this time the objections I made on pages 684 and 685 of the Record to the introduction of this document in evidence as Exhibit 34, namely, its authorship is not identified and it is incompetent, irrelevant and immaterial.

Exhibit 571-4w is a carbon copy of telegram to
5728 Pacific Portland Cement Company from the Riverside Cement Company, dated November 18, 1935. It deals with price information on file with the Trade Practice Committee. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to material on file with the Trade Practice Committee; therefore, does not tend to prove any allegations of the complaint.

Exhibit 947-14f is a mimeographed bulletin addressed to all dealers in Southern California, Arizona and Nevada, from the Southwestern Portland Cement Company, dated November 19, 1935. It concerns price information on file with the Trade Practice Committee. I object to the introduction of the material on the ground that it relates to material on file with the Trade Practice Committee; therefore, it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this relates to the inferim period immediately after the Schechter decision.

Exhibit 947-14g is an unaddressed mimeographed memorandum on prices of Monolith firms for Southern California, issued November 19, 1935. It deals with an increase in Southern California prices. I object to
5729 the introduction of this material on the ground that it relates to material on file with the Trade Practice Committee. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objections that this relates to the interim period immediately after the Schechter decision.

Exhibit 947-14e is a telegram to H. O. Warner, Colorado, from the Trade Practice Committee, dated November 19, 1935. It relates to an increase in price of cement for Arizona and Southern Nevada, which a member has filed. I object to the introduction of this material on the ground that it relates to material on file with the Trade Practice Committee and, therefore, does not tend to prove any allegations of the complaint. I renew my objection that this relates to the interim period immediately after the Schechter decision.

5730 Exhibit 947-14Y is a carbon copy of a letter to G. H. Reiter of the Trade Practice Committee from H. O. Warner of Colorado, dated December 2, 1935. This let-

ter deals with an announcement of a recent price filing. I object to the introduction of this material on the ground that it relates to material on file with the Trade Practice Committee. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 417-2J is a letter to A. J. Rooney of Huron Portland Cement Company from F. R. Johnson of Aetna Portland Cement Company, dated December 20, 1935. I object to the introduction of this material on the ground that it relates to the warehouse situation and dealer territory and is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. In addition, I object to the introduction of this document on the grounds that it is irrelevant and immaterial as far as proving the facts for which it is offered is concerned.

Exhibit 417-2I is a carbon copy of a letter to F. R. Johnson, Aetna, from A. J. Rooney, Huron dated December 24,
1935. I object to the introduction of this material
5731 on the ground that it relates to the warehouse situation and dealer territory. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. In addition, I object to the introduction of this document on the grounds that it is irrelevant and immaterial as far as proving the facts for which it is offered is concerned.

Exhibit 947-15E is a carbon copy of a letter to B. H. Rader of Lehigh, from H. O. Warner of Colorado, dated April 7, 1936. This letter refers to information secured for the use of Professors Burns and Clark. I renew the objections I have already made to all materials pertaining to the Burns-Clark Survey. I further object to this document on the ground that the chart referred to is not attached and that the letter is, therefore, not understandable without oral testimony.

Exhibit 418-A-D is a carbon copy of a letter to B. F. Affleck of Universal Atlas, from S. T. Crapo of Huron, dated July 29, 1936. This letter relates to the competitive situation in Michigan. I object to its introduction in evidence for the reason that it contains statements of opinion and hearsay regarding facts, not within the knowledge
of the writer, as to the motives of the Wabash and
5732 Dewey companies. I object to the introduction of this document on the grounds that it is irrelevant and

immaterial and does not tend to prove any of the allegations of the complaint.

Exhibits 870-13N-13R, 867-U-Y, 551-J-3N, 870-13B-13-D are price lists of prices in port areas. Unidentified pencil notations appear on the face of the exhibit. No proof has been offered that the price lists were sent or received by respondents before their effective date or that salesmen of respondents did not pick them up in the field. I, therefore, object to their introduction in evidence on the grounds that they are irrelevant and immaterial and do not tend to prove any of the allegations of the complaint.

Exhibit 418-E-F is a carbon copy of a letter to B. F. Affleck of Universal Atlas, from S. T. Crapo of Huron, dated August 5, 1937. The letter relates to the entrance of the Marquette Company into the Milwaukee market area. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 418-G is a letter to S. T. Crapo of Huron, from B. F. Affleck of Universal Atlas, dated August 13, 5733 1937. The letter is in answer to Mr. Crapo's letter of August 5, 1937, to Mr. Affleck. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 922-B-3G is a series of price lists of prices in port areas. Unidentified pencil notations appear on the face of the exhibit. No proof has been offered that the price lists were sent or received by respondents before their effective date or that salesmen of respondents did not pick them up in the field. I object to them on the grounds that they were, therefore, irrelevant and immaterial and do not tend to prove any of the allegations of the complaint. I object further to their introduction in evidence for the reason that they have not been properly authenticated.

5734 Washington, D. C.,
Thursday, May 5, 1938.

5735 Mr. Leisure: Your Honor, we had reached last night in the offer of exhibits, up to Group 6. We had completed that with the objections.

Group 7 as offered by the Commission contained only one document, Exhibit 879-3P, and it is a letter dated April 6, 1936, to Charles L. Hogan, of the International Cement Corporation, now with the Lone Star Cement Corporation, to B. F. Affleck of the Universal Atlas Cement Company.

This letter on its face shows that Mr. Affleck promised to give the Chairman at a hearing, certain information involving so-called basing points located at the mills of the Universal Atlas Cement Company.

An examination of the hearings before the Committee on Interstate Commerce of the United States Senate on S. 4055, being the Wheeler Anti-basing Point Bill, reveals the fact that this is the hearing referred to in this letter.

5736 In addition to the general objections which I have already made and which apply to this exhibit, I would like to make the further specific objection that this letter is not relevant or material to any of the issues in this case. The letter itself relates to information which was prepared for a committee of the United States Senate and discussed information used or supplied in connection with that open hearing and concerning pending legislation. Without some offer of proof from counsel for the Commission showing in what manner it is connected with this case, the letter is not material and relevant. The burden should not be put upon us to assume that this letter is to be used in this proceeding for any other purpose than to prove the allegations in the complaint.

5737 The next group, Your Honor, is Group 8 as offered by the Commission, and it appears on page 5345 of the record. In addition to the general objections which we have made, I would like to object to the introduction of these papers on the grounds that they are irrelevant and immaterial, first because the complaint does not contain any allegations concerning activities by respondents with respect to State-owned cement plants.

Second because the exhibits offered have no tendency

to show that the respondents were opposed to State-owned plants, and their interest is readily explainable on the ground that they wished to make certain that any possible yardstick used to measure their profits would be accurate and of a standard length.

Third, because opposition to a State-owned plant is not an activity in restraint of trade under the anti-trust
5738 laws.

Since these documents do not tend to prove any of the issues set out by the pleadings in this case, we object to their admission in evidence.

Mr. Leisure: The exhibits referred to under Group 8, I have listed on a separate sheet of paper, and I will hand it to the stenographer for inclusion in the record.

Examiner Norwood: The record may incorporate them.

(The list of exhibits referred to is as follows:)

731-12U 731-12T 731-12S.

Mr. Leisure: I have certain specific objections which I will also hand to the stenographer.

5739 In addition to the objections which I have raised the Commission's offer as a whole, and those which I have raised to this group of documents, I have some further specific objections. The first specific document which I will object to in this group is Commission's Exhibit 731-12U. This is a letter of February 15, 1935, from A. J. R. Curtis, of the Portland Cement Association, to F. M. Coogan, of the Alphas Portland Cement Company. This letter, together with other letters enclosed in this exhibit between the Portland Cement Association and Mr. Coogan of the Alpha Cement Company, deal with the financial condition of the South Dakota State Cement Plant, an issue which is not raised in the present proceeding, and I, therefore, object to Commission's Exhibit 731-12U on the grounds that it is immaterial, irrelevant and too remote, as far as any of the issues in this case are concerned. It does not tend to prove any of the issues raised by the pleadings and the Portland Cement Association is not a respondent in this case and is not empowered to bind any of the respondents. As you know, the Portland Cement Association is a national organization to improve and extend the uses of concrete and has nothing to do with the marketing problems and practices employed by any member of this industry.

5740 Your Honor, I make the same objections to 731-12T and 12S as I have already made to Commission's Exhibit 731-12U.

5741 Mr. Leisure: Groups 9, 10, 11 and 12, as offered by the Commission appear on pages 5345-7 of the record.

In addition to our general objections on these exhibits which apply to all of these documents, I wish to make further objections to the introduction of this material on the ground that it is irrelevant and immaterial.

As to the reduction in rail rates to ports, first, because some of the material contained in this offer refers to efforts of the respondents to induce railroads to reduce their rates in order to help domestic manufacturers to meet the competition of foreign cement. Such an activity is not alleged in the complaint. I submit that such evidence tends to show that competition was furthered and not restrained. It has not been shown that this has had any effect on the volume of imports. Even assuming that the volume of imports has been reduced this situation does not present a different picture than that obtained on any sale. Any time a sale is made the seller necessarily shuts out his competitors to that extent. The claim that this evidence tends to show that competition was restrained in effect contends that every competitive step is in restraint of trade. The only way a respondent could keep imports out of the market by a price inducement was to com-

5742 pete with them successfully.

Second, because some of this material relates to activities aimed at preventing a reduction in the tariff on foreign cement. Evidence of this is irrelevant because it is not mentioned in the complaint and is not included by implication.

The admissibility of this evidence is based on the premise that success on respondents' part would result in a restraint of trade. This in turn presupposes that a tariff is harmful, the proof of which would require a re-examination of our whole political economy. The exercise of the right of decision in order to obtain action along the lines of an established national policy, such as the protective tariff, is not a restriction within the contemplation of the anti-trust laws.

Third, because some of the documents relate to importations along the Mexican border. These are clearly not within the contemplation of the complaint.

Fourth, because some of this material relates to discussions between domestic manufacturers and importers. The complaint does not allege that one of the means used to effect the alleged price combination was an agreement with foreign producers nor does it name them as co-conspirators.

5743 Because the remainder of the offer contains miscellaneous material not relating to imported cement. These documents deal with the freight rate service, opposition to the Government loans for new mills, and public relations activities. I will not repeat our objections to the relevancy of such papers at this point, as I have covered this elsewhere, but I would like to direct your Honor's attention to these objections and I incorporate these objections at this point with the same force and effect as though I repeated them as to each specific document contained in this group.

5747 Now, as to Group 9, Your Honor, I have listed the exhibits and have written out the specific objections and with your permission I will give those to the reporter to be incorporated.

Examiner Norwood: Let them be incorporated.

(The list of exhibits and specific objections thereto are as follows:)

812-I	812-H	867-5I
818-M	885-2A	

In addition to the objections which I have raised to the Commission's offer as a whole, and those which I have raised to this group of documents, I have some further specific objections.

The first specific objection which I wish to make to documents in this group involves Exhibit 812-H and

5748 an enclosure, 812-I. These documents are a letter to Charles F. Conn, President of The Cement Institute, from H. C. Lundborg, Secretary of The Cement Institute, of November 25, 1933, attaching a copy of a letter to Charles F. Conn from E. R. Hollander, of the Cement Trading Company of New York City. This letter deals with the suggestion that there be a conference between the Institute, Colonel Rose, the National Administrator of the Building Supply Dealers Association, and Mr. Hollander, with reference to the "unsatisfactory conditions in respect to the cement industry in the metropolitan district."

I object to these letters on the grounds that this was during the N. I. R. A. period and apparently refers to a conference between the Code Authority in the Builders' Supply Industry and The Cement Institute prior to the time that the Code Authority had been set up for the Portland Cement Industry. I further object that 812-I was written by a non-respondent and is not admissible except for the limited purpose to characterize any action taken and is not proper evidence as to the truth of its contents. I make the further objection that these documents do not tend to prove any of the issues raised in the pleadings and are irrelevant, immaterial and too remote.

5750 I next object to Exhibit 885-2A, which is a carbon copy of a letter from G. H. Reiter, General Manager of The Cement Institute, to Messrs. Coogan, Bowen and Stark, dated April 6, 1937. This letter purports to enclosed a draft of protest against cement importations. This draft is not attached to the exhibit, although I believe that both the draft and the final protest were submitted to the Federal Trade Commission pursuant to the subpoenas served upon certain of the respondents. I, therefore, make the objection that the offer made by counsel for the Commission is incomplete and should not be admitted without either the draft or the final report being offered at this time also.

I now further object that since it is the right of any citizen to object to such matters of national policy as tariff on imports, that such a document is not material or relevant to any of the issues raised in the pleadings.

5751 Mr. Leisure: The same as to Group 10.

Examiner Norwood: Yes.

(The list of exhibits and specific objections thereto are as follows:)

844-K	576-4P	576-Q
844-L	576-S	576-5H
844-M	576-T	576-W
844-N	576-R	576-V
576-4-Q	576-P	

The exhibits in the tenth separate group offered by Counsel for the Commission also deal with imported cement, and were covered by the group objection to groups IX to XII, inclusive. I have the following further objections to individual documents.

Commission's Exhibit 844-k, l, m and n is an unsigned memorandum of a joint meeting of the Tariff Committee of the Portland Cement Association and the Public Relations Committee of the Cement Institute, held in Washington on March 6, 1934. I object to the admission of this document into evidence on the ground that discussions of objections to tariff laws and to such matters are not material or relevant to any of the issues raised by the pleadings.

Commission's Exhibit 576-4q is a photostatic copy of a form letter to members of the Institute in District
5752 9, specifically addressed to B. F. Affleck, of Universal Atlas Cement Company, from G. H. Reiter, of the Cement Institute, dated October 2, 1934. This letter deals with the payment of cost of preparation of Texas Rate Book No. 1. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 576-4p is a photostatic copy of an unsigned letter to C. Baumberger, Institute Trustee in District 9, from "F. L. S." Vice President and General Sales Manager. This letter also deals with the payment of cost of preparation of Texas Rate Book No. 1. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 576-1s-t is a photostatic copy of a letter headed "private and confidential," addressed "Dear John," from Max A. Berns of Universal Atlas Cement Company, dated January 7, 1935. This letter relates to a memorandum in regard to some sort of a publicity campaign against reducing tariff on cement. I object to the introduction of this document on the grounds that it
is irrelevant and immaterial and does not tend to
5753 prove any of the allegations of the complaint. I object for the reason that any citizen or groups of citizens may protest against the tariff policy of these United States. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document.

Commission's Exhibit 576-1r is a photostatic copy of a letter to Max A. Berns, of Universal Atlas Cement Company, from John B. Reynolds, of The Cement Institute dated January 12, 1935. This letter relates to objections

to a reduction in tariff." I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. Unidentified pencil notations appear on the face of the exhibit.

Commission's Exhibit 576-1p is a photostatic copy of a memorandum to J. B. Reynolds, of The Cement Institute, from Max A. Berns, of Universal Atlas Cement Company, dated January 14, 1935. This memorandum relates to publicity on tariff. I object to the introduction of this
5754 document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. This document merely clutters up the record.

Commission's Exhibit 576-1q is a photostatic copy of a memorandum to "J. B. R." from "M. A. B." dated January 15, 1935. This memorandum deals with publicity on tariff. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document.

Commission's Exhibit 576-5h is a photostatic copy of a letter to B. F. Affleck of Universal Atlas Cement Company, from G. F. Coffin, of The Cement Institute, dated October 1, 1935, requesting cooperation in protest against Government loans to cement plants. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that
5755 any citizen or groups of citizens may protest against the tariff policy of these United States. I also object because the President said no R. F. C. loans were to be made in an over-capacitied industry,—he mentioned cement; therefore, a protest was certainly in order, and such documents merely clutter up the record.

Commission's Exhibit 576-w is a photostatic copy of a letter to Blaine S. Smith, of Pennsylvania-Dixie Cement Corporation, from F. E. Schmitt, of the Engineering News-Record, dated May 8, 1936. This letter contains comments on an article by a non-respondent. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I object to this on the ground that it is written by a non-respondent. An examination of Commission's Exhibit 576-v shows that the officer of a respondent to whom it was addressed did not accept the views expressed. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document.

Commission's Exhibit 576-v is a carbon copy of a letter to Max A. Berns, of Universal Atlas Cement Company, from Blaine S. Smith, of Pennsylvania-Dixie Cement Corporation, dated May 9, 1936, enclosing Exhibit 576-w. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend 5756 to prove any of the allegations of the complaint.

Mr. Leisure: The same as to Group XI.

Examiner Norwood: Yes.

(The list of exhibits and specific objections thereto are as follows:)

534-J	534-B	586-4Z
534-I	534-E	586-4L
534-H	583-B	586-4M
534-F	868-7K	586-4N

The exhibits in the eleventh separate group offered by Counsel for the Commission also deal with imported cement, and were covered by the group objection to groups IX to XII, inclusive. I have the following further objections to individual documents.

Commission's Exhibit 534-i is a carbon copy of a letter to G. H. Reiter, of the Trade Practice Committee, from Walter S. Wing, of Pennsylvania-Dixie Cement Corporation, dated August 27, 1935. This letter deals with the filing of terms and conditions of sale to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not

tend to prove any of the allegations of the complaint. Such material as this merely clutters up the record with
5757 immaterial facts which the respondents would be willing to stipulate if they were material, since if it proves anything it is beneficial to the respondents.

Commission's Exhibit 534-h is a carbon copy of a letter to G. H. Reiter, of the Trade Practice Committee, from Walter S. Wing, of Pennsylvania-Dixie Cement Corporation, dated September 3, 1935. This letter deal with a new filing to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Such material as this merely clutters up the record with immaterial facts which the respondents would be willing to stipulate if they were material, since if it proves anything it is beneficial to the respondent.

Commission's Exhibit 534-j is a mimeographed letter to fourteen companies from G. H. Reiter, of the Trade Practice Committee, dated August 19, 1935, relative to distributing the filing of prices and conditions to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. This activity has been discontinued, and there is no
5758 present threat of its being revived. If it is to prove that special prices were made by individual companies to meet foreign competition, we could stipulate that fact.

Commission's Exhibit 534-f is a mimeographed letter to fourteen companies from G. H. Reiter of the Trade Practice Committee, dated September 21, 1935, relative to distributing a filing of price and conditions to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. This activity has been discontinued. If it is to prove that special prices were made by individual companies to meet foreign competition, we could stipulate that fact.

Commission's Exhibit 534-b is a mimeographed letter to fourteen companies from G. H. Reiter, of the Trade Practice Committee, dated October 9, 1935, relative to distributing a filing of price and conditions to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. This

activity had been discontinued. If it is to prove that special prices were made by individual companies to meet foreign competition, we could stipulate that fact.

5759 Commission's Exhibit 534-e is a carbon copy of a letter to G. H. Reiter of the Trade Practice Committee, from Walter S. Wing, of Pennsylvania-Dixie Cement Corporation, dated October 1, 1935. This letter deals with the filing of prices and terms to meet imported cement. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Such material as this merely clutters up the record with immaterial facts which the respondents would be willing to stipulate if they were material, since if it proves anything it is beneficial to the respondents. Your Honor, this is another exhibit which, if the purpose is to prove special prices were made by an individual company to meet foreign competition, we would be willing to stipulate the facts.

Commission's Exhibit 583-b is a mimeographed statement, unaddressed, from S. N. Peters of Giant Portland Cement Company, dated December 4, 1935, announcing to the trade the discontinuance of stock of cement in Brooklyn to meet imported cement. I have no objections to this document other than the objections heretofore stated.

5760 Commission's Exhibit 868-7k is a photostatic copy of a letter to Frank Van Ummerson, of the N. E. Freight Association, from R. J. Mahon, of International Cement Company, dated March 5, 1936. This letter relates to correspondence in regard to reductions in freight rates to certain ports. Since this is a legal activity to get lower freight rates, I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 586-41-4n is an unaddressed mimeographed statement by D. S. Browder of Pennsylvania-Dixie Cement Corporation, dated January 7, 1937. This statement deals with statistics on reductions in domestic to meet foreign cement. I object to the introduction of

5761 this document, on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Mr. Leisure: The same as to group 12.

Examiner Norwood: Yes.

(The list of exhibits and specific objections thereto are as follows:)

644-K
644-H
924-6A
551-A

Your Honor, I have already objected generally to the documents contained in the twelfth group of exhibits offered by Counsel for the Commission. This objection was combined with objections to groups IX, X, XI and XII.

In addition to the objections which I have raised to the Commission's offer as a whole, and those which I have raised to this group of documents, I have some further specific objections.

The first document which I will consider is Commission's Exhibit 644-k, which is a carbon copy of a letter to E. P. Lucas, Institute Trustee, from L. C. Newlands, of Oregon Portland Cement Company, dated August 8, 1933. This letter is a protest against the importation of foreign cement through the Port of Portland under highly un-
5762 equitable conditions. I also object for the reason that any citizen or groups of citizens may protest against the tariff policy of these United States.

Commission's Exhibit 644-h is a letter to E. P. Lucas, Institute Trustee, from George R. Gay, dated August 10, 1933. This letter is a protest against the importation of foreign cement through the Port of Portland under highly unequitable conditions. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object for the reason that any citizen or groups of citizens may protest against the tariff policy of these United States.

Commission's Exhibit 551-a is a carbon copy of a
5763 letter to J. P. Duffy Company from "H. B. R." of Nazareth Cement Company dated March 24, 1934. This letter deals with the addressor's refusal to sell cement to the addressee, who imports same. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove

any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Mr. Leisure: Group 13 appears on page 5347 of the record. In addition to the general objections already made which are to apply to the groups, I object further to the introduction of these papers on the ground that they are irrelevant and immaterial.

415 (572)	424-I	549-2-A
415 (573)	424-H	896-A and B
415 (574)	424-G	933-7R
424-D	424-E	545-4N
424-C	424-F	545-4M
424-B	549-2B	545-4L
424-A	549-Y	747-D-E

First: Because the Complaint alleges that the purposes of the freight rate books "is not accurate rate information but precisely uniform freight rate applications
5764 by all producers." It further states that this purpose appears from the alleged fact that the rates carried by Institute books are used in case of an error in the books or a modification in the rates until all producers are notified of the correct rate.

These documents show that corrections have been made but there is nothing which even remotely indicates that the rate used by the writer's company and by others was erroneous if they had knowledge of the correct rate. Nor is there any proof in these documents that during the period between the discovery and the correction of an incorrect rate anything other than the correct rate was used. These exhibits if they prove the existence of a freight rate service, are merely cumulative in effect, and should not be allowed to encumber an already overburdened record.

These documents contain nothing else which tends to show that the alleged purpose of the freight rate books is the true object of this service. I, therefore, object that the subject matter of this group, while dealing with the freight rate service, is too remote to effect the issues raised by the pleadings.

Second: Because I make a further objection that evidence of this activity is immaterial, for under the doctrine of stare decisis, these self-same activities were ap-
5765 proved by the Supreme Court in the case of the *Cement Manufacturers Protective Association* v. *United States* (268 U. S. 588).

Mr. Leisure: I have separately listed the exhibits on one page, and I will hand the reporter the specific objections referring to those exhibits.

Examiner Norwood: They may be incorporated.

(Individual objections to Exhibits in Group XIII.) Your honor, in addition to the general objections which I have made to the admissibility of all of these documents, and more specifically to all of the documents in this group, I would like to make the following additional objections to individual documents.

The first document is Exhibit 415-572. This is a letter to C. H. Reigart, of the Freight Rate Bureau, from J. B. Johnson of Cowham Engineering Company dated February 11, 1937. This letter contains a request for added freight rates from a new point. This document is not material since the correct freight rates were issued. Unidentified pencil notations appear on the face of the exhibit. I object to this on the ground that it is written by a non-respondent.

Commission's Exhibits 415-573, 415-574, 424-d, c, b, a, i, h, g, e, f, 549-2b, y, 2a are communications consisting of requests to the Institute to check freight rates, re-
5766 quests to include destinations in forthcoming freight rate books, and requests to state sources of rates included, and the like. Unidentified pencil notations appear on the face of these exhibits. I have no further specific objections; our general statement of objections, however, applies.

Commission's Exhibit 896-a is a carbon copy of a letter to G. H. Reiter, of The Cement Institute, from C. H. Seaman, of Davidson Coke and Iron Company, dated August 29, 1933. This letter deals with freight rate books. I object to this on the ground that it is written by a non-respondent. This exhibit refers to the use of freight rate books by other industries, not cement, and is, therefore, not material. Unidentified pencil notations appear on the face of the exhibit.

Commission's Exhibits 896-b, 933-7r, 545-4n, 4m, 4L, 747-d, e are letters from the Institute explaining freight rate service. I have no further objections to these documents; I intend, however, that our general and group objections should apply to all these documents.

5768 Mr. Leisure: The fourteenth group as offered by the Commission is on pages 5348-5350 of the record.

In addition to the general objections, I object to these documents:

First, those exhibits which relate to special rates. Special rates are not mentioned in the complaint and have not been shown to be difficult of determination. They are not, therefore, within the issues raised by the pleadings.

Second, much of this material concerns open price filing, and I hereby incorporated the same objection which I have already made to the other documents bearing on this same subject, with the same force and effect as though it were repeated at this point. The fact that some of these papers also relate to destination costs does not make them material or relevant in this case.

Most of the material relates to transactions occurring during the N. R. A. Code and interim periods. We already have objections, which as I understand are to apply to all of these documents, and I will not repeat those at this time.

I will hand the reporter the group of identical numbers covering that group of exhibits and our specific objections thereto.

Examiner Norwood: Incorporate them in the record.

5769 (The list of exhibits and the specific objections thereto are as follows:)

835-Z	734-H	822-C
947-H and I	947-D-G	947-C
947-B	947-O	548-3B
919-N	919-M	947-9I-9K
947-S	947-R	919-L
919-K	947-9V	585-CC
585-DD	585-EE	831-L
831-J	831-H and I	947-10C
947-10E	820-H	919-2L
919-2K	919-2J	919-2I
855-2Z	947-13B	947-13A
948-2A-2B	837-A-L	919-3E and 3F
562-7L	562-7K	885-6S
587	885-8E	919-3C
919-3B	885-2Q and 2R	

Your Honor, in addition to the general objections which I have made to the admissibility of all of these documents, and more specifically to all of the documents in this group,

I would like to make the following additional objections to certain individual documents.

The first document is Exhibit 835-Z. This is a carbon copy of a letter to E. W. Martindell, of the Ideal Cement Company, from an unidentified Traffic Manager, dated September 30, 1933, relative to land grant rates. I have no objections to this document other than the objections heretofore stated.

5770

Commission's Exhibit 734-H is a letter to E. W. McGovern, of Hermitage Portland Cement Company, from J. H. Dalbey, of Cumberland Portland Cement Company, dated October 17, 1933, relative to circulating a tabulation. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Such material as this merely clutters up the record with immaterial facts which the respondents would be willing to stipulate if they were material, since if it proves anything it is beneficial to the respondents.

Commission's Exhibit 947-D-G is a memorandum to "H. O. W." from "T. K. P.", dated April 5, 1935, requesting advice and comments on multitude destination costs revised in accord with recent changes of certain California land grant rates. I have no objections to this document other than the objections heretofore stated.

Commission's Exhibit 822-C is a letter to Pennsylvania-Dixie Cement Corporation from Baxter D. McClain, dated February 27, 1934, requesting list of land grant rates. I have no objections to this document other than the objections heretofore stated.

5771

Commission's Exhibit 947-H-I is a printed supplement to the price list for Arizona, California and Nevada, effective January 30, 1935, of Southwestern Portland Cement Company, dated February 1, 1935. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material on the ground that it relates to the distribution of filed prices by the Code Authority. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 947-C is a carbon copy of a letter to T. K. Partridge, of Southwestern Portland Cement Company, from H. O. Warner, of Colorado Portland Cement Company, dated April 8, 1935. I have no objections

to this document other than the objections heretofore stated.

Commission's Exhibit 947-B is a letter to H. O. Warner, of Colorado Portland Cement Company, from M. W. Upperman, of Southwestern Portland Cement Company, dated April 15, 1935. I renew my objection that this is N. R. A. Code material. I have no objections to this document other than the objections heretofore stated.

5772 Commission's Exhibit 947-1-O is an original copy of a memorandum to Mr. Partridge, dated April 20, 1935. This is an inter-office communication about land grant rates under increased emergency charges. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 549-3B is Executive Letter #52 to all members of the industry from G. H. Reiter, Chairman of the Code Authority for the Portland Cement Industry, dated May 27, 1935. This order deals with destination costs to the United States Government. I renew my objection that this is N. R. A. code material.

Commission's Exhibit 919-N-M consists of carbon copies of a letter to S. O. Harper, Assistant Chief Engineer, U. S. Bureau of Reclamation, from G. H. Reiter, Chairman of the Code Authority for the Portland Cement Industry, dated May 27, 1935, and reply thereto of June 7, 1935. This correspondence relates to a new control clause filed with the Cement Code Authority. I renew my objection that this is N. R. A. Code material. I object to this on the ground that it is written by a non-respondent. The third party in this case is the U. S. Government.

Commission's Exhibit 947-9I, 9J, 9K, 1S, 1R is a 5773 collection of documents to and from the Code Authority which distributes prices filed with the Code Authority. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the ground that it relates to the distribution of filed prices by the Code Authority. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Such material as this merely clutter up the record with immaterial facts which the respondents would be willing to stipulate if they were material, since if it proves anything it is beneficial to the respondents.

Commission's Exhibit 919-L is a carbon copy of a letter to G. H. Reiter, of the Institute, from J. F. Neylan, of Lone Star Cement Corporation, dated June 14, 1935. This letter deals with quotations to the U. S. Government. I renew my objection that this relates to the interim period immediately after the Schechter decision. This is a carbon copy of Exhibit 1045-A, and therefore it adds nothing to the record.

Commission's Exhibit 919-K is a letter to J. F. Neylan, of Lone Star Cement Corporation, from G. H. Reiter, of the Trade Practice Committee, dated June 17, 1935. This letter is a reply to Exhibit 919-L. I renew my ob-
5774 jection that this relates to the interim period immediately after the Schechter decision.

Commission's Exhibit 947-9V, 585-2C,-2D-2E is a group of documents to and from the Trade Practice Committee, which deal with a complaint of the failure of a company to follow its filed prices. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this material on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations on the complaint. I have the further objection that Exhibits 947-9V, 585-2C, 585-2D, and 585-2E are already in evidence as Exhibits 277-2B, 277-2C, 277-2D and 277-2E, respectively, and I request that counsel withdraw the offer of these documents.

Commission's Exhibit 831-I-J-H-I is a group of exhibits about obtaining land grant rates from railroads. I have no objections to this material other than the objections heretofore stated.

Commission's Exhibits 947-10C, 10E, 820-H, 919-2L, 2K, 2J, 2I and 947-13B, 13A are a group of letters to and from the Trade Practice Committee about a company quoting a price below its price filed with the Trade Practice Committee. I renew my objection that this relates to the interim period immediately after the Schechter division.

I object to the introduction of this material on the
5775 grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I have the further objection that Exhibit 947-10E is already in evidence as Exhibit 277-2L, and I request that counsel withdraw the offer of this document.

Commission's Exhibit 855-2Z is a carbon copy of a let-

ter to the Chairman of the Trade Practice Committee from W. C. Brownson of North American Cement Corporation, dated October 18, 1935, relative to Trade Practice Committee price filing. I renew my objection that this relates to the interim period immediately after the Schechter decision. In addition, special sales are not mentioned in the complaint. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibits 948-2A, 2B, 837-A-L, 919-3E, 3F, 885-8E and 919-3C, 3B are a group of letters to and from The Cement Institute about the land grant rate service. The collection of land grant rates has been discontinued; hence, I object to the introduction of this material on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 562-7L is an original copy
5776 of a letter to the California Portland Cement Company from William Guthrie of Guthrie & Curtis, dated August 13, 1936, relative to the Bartlett Dam rate. I object to this on the ground that it is written by a non-respondent.

Commission's Exhibit 562-7K is a letter to Garner A. Beckett of Riverside Cement Company from E. E. Duque of California Portland Cement Company, dated August 14, 1936, relative to rates for Bartlett Dam. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Commission's Exhibit 587 is a carbon copy of a letter to two traffic managers of railroad companies from D. S. Browder, of Pennsylvania-Dixie Cement Corporation, dated October 11, 1935(?). This letter relates to special Government rates on cement for Passamaquoddy Dam. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 885-6S is a letter to G. H.
5777 Reiter, of The Cement Institute, from E. W. Martin, of Ideal Cement Company, dated August 22, 1936.

This letter deals with the company land grant rate figures from six California cement plants to Newkirk, New Mexico. This document is already admitted in evidence as Exhibit 841-S.

Commission's Exhibit 885-2Q, 2R is an original copy of an Institute General Letter to all members from G. H. Reiter, dated January 28, 1937, relative to land grant rates and expiration of emergency freight surcharge. This is merely a draft of a letter and there is no proof that it was ever sent. The Institute has discontinued this activity. Hence, I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Mr. Leisure: Group 15 as offered by the Commission appears on page 5350 to 5352 of the record. This
5778 material is concerned only incidentally with the allegations of the complaint, and I make the further objection to its introduction on the ground that it is irrelevant and immaterial. This may be seen by analyzing the group. The exhibits which refer to the dealers are documents concerning their profits. The complaint alleges that the respondents have limited sales to middlemen falling within their definition of a dealer. Correspondence has been offered here which relates merely to the marketing area of accepted dealers. There is no question as to whether they qualify as dealers, but only as to the territory to be assigned to those qualifying. There is no question of diversions, for the final destination was made known to the prospective buyer. Evidence of this nature is not embraced in the offer of proof, and it is for this reason likewise irrelevant and immaterial.

As to the exhibits referring to diversions, the complaint charges that the "pricing system may be impaired or broken" by the diversion of shipments, and that the elimination of diversions tends toward the "maintenance of concerted delivered prices." Exhibits have been offered tending to show that a respondent brought a claim against
a railroad which had permitted a diversion, seeking
5779 recompense in the amount of the loss in net caused by the figure quoted for the ostensible instead of the final destination.

Evidence of this nature shows a concern as to the seller's net, regardless of the effect on the general price structure of such sales. The effect of the individual sale on the "pricing system" or structure is not shown or con-

sidered. Even though the price at the ultimate destination remains unchanged by one or several sales it would still be to the advantage of the manufacturer to recoup his loss in nets. Hence this evidence has no tendency to prove the allegations of this complaint.

I have separately stated our objections under "Specific sales contract", and under "Local Materials Committee", and "Cost of Belgian Cement" and under "Education of Public Officials", "Trucking" and "Government Bids," and I will give these to the stenographer with the list to be incorporated in the record.

Examiner Norwood: Let the record contain them.

(The matter referred to is as follows:)

Specific Sales Contract.

This group contains exhibits concerning the use of specific sales orders. The complaint alleges a conspiracy to restrain competition in price (Par. 4) by the use of a so-called Basing Point System (Par. 5) and that 5780 the respondents use various means in support of their combination (Par. 7). Among others, it is stated that the respondents agreed on uniform terms of sale and discounts. The adoption and use of a specific sales contract or order is not an act in furtherance of a conspiracy to maintain the so-called basing point system, but is designed to prevent fraud on the part of the buyer. It bears no relation to delivered prices and is, therefore, not within the issues.

Furthermore, such documents are not covered by Counsel for the Commission's offer of proof, and hence are irrelevant and immaterial.

Local Materials Committee.

This group also contains exhibits concerning the local Materials Committee of the Cement Institute. The activities of the Local Materials Committee are not within the issues. This Committee concerned itself with laws and regulations limiting cement purchases to producers located within the state. Shipments across state lines would occur under a uniform mill net system or even under a horse trading system and the Complaint contains no allegation with respect to this activity.

Moreover, evidence of this nature is not embraced in the offer of proof and is for this reason likewise irrelevant and immaterial.

5780-A Cost of Belgian Cement.

Some exhibits in this group tend to show that information was compiled by the respondents with regard to the cost of Belgian cement. There is no indication that this has any reference to any alleged activity of respondents with reference to any problem concerning imported cement. Such evidence is too remote to effect the issues of this case.

Moreover, evidence of this nature is not embraced in the offer of proof and is for this reason likewise irrelevant and immaterial.

5781 Education of Public Officials.

Some exhibits in this group tend to show that respondents sought to explain the so-called Basing point method to public officials and to defend it against their attacks. This has no probative value as I have indicated at another point in these objections.

Moreover, evidence of this nature is not embraced in the offer of proof and is for this reason likewise irrelevant and immaterial.

Trucking.

Some exhibits in this group deal primarily with a dispute over the railroad rate structure in California and which only incidentally involves trucking. Briefly, the exhibits tend to show that certain mills began to truck to nearby points because the differential in rail rates in their favor was insufficient as against the so-called outside mills. When this favoring differential was increased on a trucking cost basis these mills ceased to truck but the outer mills thereupon commenced to truck. When truck rates were placed under the jurisdiction of a public service commission the latter mills began to use proprietary trucks in an effort to equalize the rail differential. This is wholly a railroad tariff question and is therefore irrelevant and immaterial. It was a question of competition as be-
5782 tween the inner and outer mills, both of which used trucking to circumvent the rail rate structure when trucking operated to their advantage.

Government Bids.

Some exhibits in this group tend to show a proposed modification of a Government contract, after the award was made to two or more companies. The Complaint alleges collusion in bidding and contains no allegation which covers this question. The proposed arrangement was expressly conditions on governmental approval.

Conclusion.

I must further object, therefore, that all of the documents contained in this group are irrelevant and immaterial and do not tend to prove any of the issues in this case.

(The list of exhibits and specific objections thereto are as follows:)

427-G	751-I	751-J
751-K	751-B and C	751-D and E
749-2V	584-G	584-I
749-N	749-A	550-XX
546-Q	546-P	546-O
546-M and N	546-L	546-K
750-G	750A	576-5T
576-5S	422-O	422-M and N
5783 422-L	806-3E and 3F	800-2U-2X
422-G and H	422-I and J and K	422-B-F
546-2I and 2 J	545-6Q	933-2S
719-A	933-3C and 3D	933-L
845-N	933-M	640-K and L
640-A-J	562-6W-6Y	422-A
585-GG and HH	817-K	839-4K
817-G and H	585-FF	585-KK
562-15W and 15X	817-I and J	735-B
735-A	954-I and J	954-K-M
553-6V	935-B	585-A

I have the following further objections to specific documents:

Exhibit 427-G is an original letter from D. L. Carpenter of Beaver to Oregon Portland Cement Company, dated September 15, 1934. This letter refers to the modification of an existing contract. There is no evidence of collusion in the original existing contract and the agreement, here-

in referred to, is conditioned upon governmental approval. I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this is N. R. A. Code material.

5784 Exhibit 751-B-C is a copy of a letter from D. S. Browder to B. S. Smith, both of Penn-Dixie, dated September 25, 1933. I object to the introduction of this document for the reason that it is an inter-office letter of the Penn-Dixie Corporation and is, therefore, not binding on the other respondents. I renew my objection that this is N. R. A. Code material.

Exhibit 751-D is a copy of a letter from E. S. Gubernator of Lehigh to C. N. Apgar of Alpha, dated April 13, 1934, and headed "reconsignment". In this letter, an official of a respondent is merely repeating the opinion of a third party. The facts are not within his knowledge. I, therefore, object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I object also on the ground that it states the personal opinion of the writer on a question of law and is, therefore, not binding on any of the respondents. I renew my objection that this is N. R. A. Code material.

Exhibit 751-E is an original letter from C. N. Apgar of Alpha to E. S. Gubernator of Lehigh, dated April 12, 1934. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I also object to the introduction of
5785 this document on the ground that it expresses the personal opinion of the writer on a question of law and can not, therefore, be binding on the respondents. I renew my objection that this is N. R. A. Code material.

Exhibit 749-2V is an original letter from F. E. Guy of Universal-Atlas to E. S. Gubernator of Lehigh, dated May 18, 1935, relating to reconsignment. I renew my objection that this is N. R. A. Code material.

Exhibit 584-G is an original letter from D. G. Browder to 13 industry men dated December 18, 1935, relating to reconsignment. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 584-I is a copy of a letter from A. R. Bogan of the Missouri Pacific Lines, dated January 11, 1936, "to interested shippers and receivers". I object to this on the

ground that it is written by a non-respondent. I object for the reason that it states the personal opinion of the writer, and is, therefore, merely unsworn opinion evidence.

Exhibit 7490N is a copy of letter from E. S. Gubernator of Lehigh to R. J. Mahon of International, dated January 23, 1936. I object to the introduction of this document on the ground that it states conclusions of the writer as to facts not within his knowledge.

5786 Exhibit 749-A is an original letter from H. C. Oliver of (Pa. RR) to E. S. Gubernator of Lehigh, dated July 14, 1936. Unidentified pencil notations appear on the face of the exhibit. I object to this, on the ground that it is written by a non-respondent. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I object further for the reason that it expresses the conclusion of the writer on a question of law and is, therefore, not binding on respondents.

Exhibit 546-Q is an unidentified, unsigned memo ostensibly sent by the High Point, Thomosville & Denton R. R. Co. to Medusa, dated February 13, 1937. I object to this memorandum on the grounds that it has not been properly identified and is, in addition, a copy. I object to this 5787 on the ground that it is written by a non-respondent.

Exhibit 546-P is a copy of a letter from G. M. Cole of Medusa to C. M. Freeman of (H. P. T. & D. rr.). I object for the reason that it states the personal opinion of the writer and is, therefore, merely unsworn opinion evidence.

Exhibit 546-O is an original letter from F. J. Flagler of (H. P. T. & D. rr.) to G. W. Cole of Medusa, dated March 1, 1937. Underlining appears upon the face of the exhibit. I object to the introduction of this document in evidence on the ground that it is written by a non-respondent. I object further for the reason that it expresses the opinion of the writer on a question of law and is, therefore, not binding on the respondents.

Exhibit 546-M-N is a copy of a letter from G. W. Cole of Medusa to F. J. Flagler of (H. P. T. & D. rr.) dated March 3, 1937. I object to this document on the ground that it is written to a non-respondent and is not binding on the respondents in this case.

Exhibit 546-L is a telegram from F. J. Flagler of (H. P. T. & D. rr) to G. W. Cole of Medusa, dated March 5, 1937.

I object to this on the ground that it is written by a non-
respondent. Unidentified pencil notations appear on
5788 the face of the exhibit.

Exhibit 546-K is a telegram from G. W. Cole of Medusa to the High Point, Thomosville & Denton R. R., dated March 5, 1937. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this document on the ground that it is written to a non-respondent and is, therefore, not binding on the respondents in this case.

Exhibit 750-G and A, dated October 13, 1937, and December 23, 1937, respectively, are copies of letters from J. J. Clous of Lehigh to H. J. Freeman of the Pa. R. R. I would like to point out that both of these letters were written after the period mentioned in the complaint. Unidentified pencil notations appear on the face of Exhibit 750-A. The complaint alleges cooperative elimination of diversions in order to maintain uniform prices. The letters are concerned with the effect of diversions on the seller's net and not on the market price. At most, the letters seek to eliminate diversions in order to minimize absorption to the amount necessary to meet competition. I, therefore, object to the introduction of these documents on the grounds that they are irrelevant and immaterial and do not tend to prove any of the allegations of the com-
plaint.

5789 Exhibit 576-5T is a photostatic copy of a letter from O. C. Hunt of Penn-Dixie to unnamed persons, dated April 5, 1932.

Exhibit 576-5S is a photostatic copy of an undated letter from C. B. Condon of Hawkeye "to all concerned."

Exhibit 422-O is a copy of a letter from A. J. Rooney of Huron, to Huron's customer, dated March 10, 1933.

Subject to their being connected up, I have no objection to any of the three above exhibits. I should like to point out, however, that none of them are addressed to other respondents.

Exhibit 422-M-N is a copy of a letter from A. J. Rooney of Huron to H. Struckman of International, dated May 2, 1933. I further object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I renew my objection that this is N. R. A. Code material.

Exhibit 422-L is an original letter from H. Struckman of

International to A. J. Rooney of Huron, dated May 4, 1933. I further object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this is N. R. A. Code material.

5790 Exhibit 422-I-K is an original letter from J. F. Neylan of International to H. Struckman of International, dated May 8, 1933. (Enclosed in Exhibit 422-G.) Marginal marks appear on the face of this letter. I object for the reason that it states the personal opinion of the writer and is, therefore, merely unsworn opinion evidence. I further object to the introduction of this document on the ground that it states conclusions of the writer. I renew my objection that this is N. R. A. Code material.

Exhibit 422-G, H is an original letter from H. Struckman of International to A. J. Rooney, of Huron, dated May 10, 1933. I further object for the reason that it states the personal opinion of the writer and is, therefore, merely unsworn opinion evidence. I renew my objection that this is N. R. A. Code material.

Exhibit 545-6Q is an original letter from G. W. Cole of Medusa to C. J. Brister of the N. Y. Central R. R. Marginal marks appear on the face of the exhibit. I further object to this document for the reason that it is written to a non-respondent and, therefore, is not binding on the other respondents in this case. I object to the introduction of this material on the ground that it relates to a railroad rate reduction secured by a Rochester contractor. I

5791 renew my objections that this is N. R. A. Code material.

Exhibit 422-B-F is a carbon copy of a letter from J. F. Neylan of International to H. S. Cree of Aetna, dated June 16, 1933. Marginal marks appear upon the face of this exhibit. I object for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence.

Exhibit 546-2-I-J is an original letter from G. W. Cole of Medusa to A. F. Cleveland of C. & N. W. rr., dated June 16, 1933. I object to the introduction of this material, on the ground that it relates to the efforts to secure reductions in short haul rates. I object further on the ground that it is written to a non-respondent and therefore is not binding on the respondents in this case. I object for the reason that

it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence.

Exhibit 933-3C is an original letter from B. H. Rader (Chairman Code Authority) to J. C. Bowen of Lehigh, dated June 23, 1934. This letter was written by the Chairman of the Code Authority, a governmental agency. I object to this, on the ground that it is written by a non-respondent. I renew my objection that this is N. R. A. Code material.

Exhibit 933-3D is a copy of letter from D. S. Col-
5792 burn of Marquette to B. H. Rader of the Code Authority, dated June 19, 1934. I renew my objection that this is N. R. A. Code material.

Exhibit 933-2S is a copy of a letter from G. H. Reiter of the Code Authority to D. S. Colburn of Marquette, dated July 16, 1934. Unidentified pencil notations appear on the face of the exhibit. I object to this, on the ground that it is written by a non-respondent. I renew my objection that this is N. R. A. Code material.

Exhibit 719-A is a carbon copy of a letter from "W" of Lehigh (?) to R. L. Gallaher of the B. & O. rr., dated July 16, 1936. I renew my objection that this relates to the interim period immediately after the Schechter decision. I object to the introduction of this document on the ground that it is written to a non-respondent and is therefore not binding on the other respondents in this case. I further object on the ground that the document is not properly identified.

Exhibit 933-M is a carbon copy of a letter from J. C. Bowen of Lehigh to G. H. Reiter of the Trade Practice Committee, dated August 6, 1935. I renew my objection that this relate to the interim period immediately after the Schechter decision.

Exhibit 933-L is an original letter from G. H. Reiter of
the Trade Practice Committee to J. C. Bowen of Le-
5793 high, dated August 8, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 845-N is a carbon copy of a letter from "H. G. L." of North American to the Cement Institute, dated September 25, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision.

Exhibit 562-6W-Y is a copy of a letter from G. A. Beckett

of Riverside to W. M. Kinney of P. C. A. I object to this for the reason that it is written to a non-respondent and is therefore not binding on other respondents in this case. I further object to the introduction of this document on the ground that it relates to the railroad rate structure in Southern California. It has no tendency to show any conspiracy among respondents or between respondents and railroads. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibits 640-K-L, 640-A-J is a copy of a letter from E. P. Lucas of Superior Portland C., Inc., to G. A. Beckett of Riverside, dated July 27, 1936, and an original letter and enclosures in reply of August 5, 1936. I object to the
5794 introduction of this material, on the ground that it relates to a dispute between inner and outer Southern California mills concerning the Southern California railroad rate structure. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 817-K is an original letter from R. D. Raff of Diamond to C. Horner of Kosmos, dated April 23, 1937. I have no objections to this document other than the objections heretofore stated.

Exhibit 422-A is an original letter from C. L. Hogan of International to A. J. Rooney of Huron, dated June 20, 1933. I renew my objection that this is N. R. A. Code material.

Exhibit 585-2G-H is a carbon copy of a letter from H. C. Koch of International to L. T. Sunderland dated October 3, 1933. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material on the ground that it relates to Governor Horner's charges. Unidentified pencil notations appear on the face of the exhibit. This exhibit is a duplicate of that offered as Exhibit 958-B and C. I, therefore, object to its admission and request that its offer or that of Exhibit 958-B and C be withdrawn.

5795 Exhibit 585-2F is an original letter from L. T. Sunderland to H. C. Koch of International dated October 7, 1933. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material on the ground that it relates to Governor Horner's

charges. Unidentified pencil notations appear on the face of the exhibit.

Exhibit 839-4K is a carbon copy of a letter from B. H. Rader of the Code Authority to C. F. Conn of The Cement Institute dated June 5, 1934. I object to this on the ground that it is written by a non-respondent. I renew my objection that this is N. R. A. Code material.

Exhibit 817-I-J is a copy of a letter from J. S. Young of Lehigh to B. H. Rader of Lehigh dated January 6, 1936. I object for the reason that it states the personal opinion of the writer and is, therefore, merely unsworn opinion evidence. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I further object to this document on the ground that it is inter-company correspondence and, therefore, no binding on the other respondents in this case.

Exhibit 585-2K is an unsigned chart showing various base prices in effect as of April 12, 1933. I object to the introduction of this document on the ground that it
5796 is not properly identified and, therefore, cannot bind the respondents.

Exhibit 735-A-B is an original letter from A. W. Wilcox of the Missoula Mercantile Co. to Three Forks dated April 15, 1937, and a copy of the reply dated April 16, 1937. I object to Exhibit 735-B on the ground that it is written by a non-respondent. I object to the introduction of these documents on the ground that it relates to the marketing territory of certain dealers and is not concerned with definition of a dealer or classification of a customer.

Exhibit 562-15W-X is a copy of a letter from J. Treanor of Riverside to "Ed", undated. I object to the introduction of this document on the ground that it has not been properly identified either in point of time or as to addressee. Further, the document discusses political situations which have nothing to do with the case. I, therefore, object on the grounds that it is irrelevant and immaterial. I object for the reason that it states the personal opinion of the writer and is, therefore, merely unsworn opinion evidence.

Exhibit 553-6V is a photostatic copy of a letter from Frank H. Smith of Lawrence to B. F. Affleck of Universal Atlas, dated March 6, 1935. Marginal markings appear

on the face of the exhibit. I object to the introduc-
5797 tion of this material on the ground that it relates to the discussions with public officials. I renew my objection that this is N.R.A. Code material.

Exhibit 935-B is Explanation #76 of the Code Authority, written over the typed signature of G. H. Reiter, Code Authority Chairman, dated March 18, 1935. I object to this, on the ground that it is written by a non-respondent Government Agent. I renew my objection that this is N.R.A. Code material.

Exhibit 817-F-H is a carbon copy of a memorandum by Chas. Horner, of Kosmos, dated December 6, 1935. I renew my objection that this relates to the interim period immediately after the Schechter decision. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document, nor is it shown that the document was ever sent out. I object further to the introduction of the attached penciled note purporting to state that this document was handed to Rader. This is undated, unsigned and unidentified and does not appear to be in furtherance of any conspiracy.

Exhibit 585 is a carbon copy of a letter from J. F. Neylan of International, to G. H. Reiter, of the Institute, dated October 30, 1935. I renew my objections that this relates to the interim period immediately after the
5798 Schechter decision. I object to the introduction of this document on the ground that it relates to use of the specific sales order. Such use is not an act in furtherance of any conspiracy to maintain the Basing Point Method. It is designed to prevent fraud and bears no relation to developing prices. The exhibit is, therefore, irrelevant and immaterial and does not tend to prove any allegations of the complaint.

Exhibit 954-I-M is a carbon copy of a letter from L. C. Newlands, of Oregon, A. N. Rea, Jr., of Monolith and J. A. Keller, of Pacific, to manufacturers in Districts 11 and 12, dated December 29, 1933, enclosing a circular issued by Pacific to the trade, dated December 27, 1933. A copy of these documents was sent to the Code Authority. I renew my objection that this is N.R.A. Code material.

Exhibit 806-3E-F is an original letter from A. O. Stark, of Universal Atlas to J. J. Porter, of North American, dated October 25, 1935. Unidentified pencil notations appear on the face of the exhibit. I renew my objection that

this is N.R.A. Code material. I object to the introduction of this material, on the ground that it relates to cost of Belgian cement delivered in Brooklyn. It is therefore irrelevant and immaterial and does not tend to prove
5799 any of the allegations of the complaint.

Exhibit 800-2U-X is a copy of a letter from H. B. Robeson, Local Materials Committee, to B. S. Smith, Local Materials Committee, dated August 29, 1934. I object to the introduction of this material, on the ground that it relates to the activities of the Local Materials Committee. Shipments crossing state lines would occur under uniform mill net system and the complaint contains no allegation concerning this activity. This document is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I renew my objection that this is N.R.A. Code material.

Exhibit 751-I-K is a typewritten copy of a letter from B. J. Hamm of the Traffic Service Corporation to C. N. Apgar, of Alpha, dated July 14, 1933. I object to the introduction of this document on the ground that it is an opinion of the writer on a question of law and is not binding on these respondents; also for the reason that it states the personal opinion of the writer, and is therefore merely unsworn opinion evidence. I further object to this, on the ground that it is written by a non-respondent. I renew my objection that this is N.R.A. Code material.
5800 Mr. Leisure: Group 16 as offered by counsel for the Commission appears on pages 5353 to 4 of the record. In addition to the general objections which we have made applying to this group we object further because it is material during the N.R.A. period and the approved N.R.A. Code of the cement industry, which specifically provided for making protests concerning the erection of new plants.

Second: Because the complaint does not allege that price was controlled by creating an artificial scarcity of cement or by rigidly controlling capacity to the
5801 point where it bore such a relation to the total production as to maintain an artificially high price level. The complaint does not even allege that a lack of sufficient capacity exists.

Third: Because the basic idea underlying the complaint is that an agreement exists to quote uniform prices.

The question of capacity has no bearing on that of uniformity.

Fourth: Because these exhibits are concerned only incidentally with the question of opposition to construction of new mills. They relate primarily to the question of whether Government funds should be loaned to facilitate this type of construction. I submit that this is a question of public policy as to which every citizen is guaranteed the constitutional right of petition, and as to which individual citizens may organize in groups for the purpose of making their petitions effective.

I will hand the stenographer that list of exhibits, together with our specific objections.

Examiner Norwood: They may go into the record.

(The list of exhibits and specific objections thereto is as follows:)

924-5R	954-2H	575-G and H
812-S	571-4H	562-16F
415-41	575-I	553-2M
415-27	562-16G	500-G
573-L	574-M and N	547-4K
415-28	500-H	500-B and C
5802 415-22	942-C	674
553-2L	553-5Z and 6A	575-A and B
942-B	571-4G	562-16J

The objections which I have made to documents in this group apply to every document in the group. In addition, I have two further objections to make, one or the other of which also apply to every document in this group. I have arranged the documents into two subgroups according to the objection applicable to each.

The first subgroup includes the following documents, which I will briefly describe as I list them:

Exhibit 924-5R. This is an original letter from B. H. Rader, Chairman of the Code Authority, to J. S. Young of Lehigh, dated December 11, 1937.

Exhibit 415, page 41. This is an original letter from F. R. Kanengeiser of Superior Cement Corp. to B. H. Rader of the Code Authority, dated December 28, 1933.

Exhibit 573 L. This is a photostatic copy of a letter from B. H. Rader of the Code Authority to J. S. Young of Lehigh, dated December 29, 1933.

Exhibit 812 s. This is an original letter from
5803 J. S. Young of Lehigh to Charles F. Conn of Giant,
dated January 8, 1934.

Exhibit 415, page 27. This is an original letter from C. Boettcher of Ideal to B. H. Rader of the Code Authority, dated January 13, 1934.

Exhibit 415, page 28. This is a copy of a letter from C. D. Nichols of Arkansas to C. Boettcher of Ideal, dated January 11, 1934.

Exhibit 415, page 22. This is a copy of a letter from B. H. Rader, as Chairman of the Code Authority, to J. S. Young of Lehigh, dated March 10, 1934.

Exhibit 574 m-n. This is a copy of a letter from the Chairman of the Code Authority to C. R. Sandford, Chief Examiner for the Loan Agency of the Reconstruction Finance Corporation, dated March 15, 1934.

Exhibit 553 2m. This is a photostatic copy of a telegram from John Treanor of Riverside to B. F. Affleck of Universal-Atlas, dated April 25, 1934.

Exhibit 553 2L. This is a copy of Affleck's reply, dated April 26, 1934.

Exhibit 500 h. This is an original letter from C. Boettcher of Ideal to Blaine Smith of Penn-Dixie, dated May 24, 1935.

Exhibit 562 16f-g. This consists of telegrams from
Blaine Smith of Penn-Dixie to John Treanor of
5804 Riverside, both being dated April 25, 1934.

Exhibit 562 16j. This is a copy of a telegram from John Treanor of Riverside to Blaine Smith of Penn-Dixie, dated May 2, 1934.

I further object to the above-named documents on the ground that the relate to transactions which took place during the N.R.A. period. These may not properly be considered for the reasons mentioned in my general statement.

The second group embraces the remainder of the offer, which are listed and described as follows:

Exhibit 500 g. This is a copy of a letter from Blaine Smith of Penn-Dixie to C. Boettcher of Ideal, dated June 8, 1935.

Exhibit 942 b. This is a telegram from Coy Burnett of Monolith to F. M. Coogan of Alpha, dated September 30, 1935.

Exhibit 942 c. This is a copy of telegraphic reply dated October 1, 1935.

Exhibits 547 4k and 954 2h. These are original letters from G. F. Coffin of Nazareth to M. C. Monday of Cumberland, and O. B Gilson of Union, dated October 1, 1935. These letters are identical except as to the addressees.

Exhibit 553 5z-6a. This is a photostatic copy of
5805 a letter from R. J. Morse of Ideal to B. F. Affleck of Universal Atlas, dated October 10, 1935.

Exhibit 500 b-c. This is a mimeographed copy of a letter from G. F. Coffin, as President of the Institute, to all members of the Institute, dated October 15, 1935.

Exhibit 571 4h. This is a telegram from John B. Reynolds of the Institute to John Treanor of Riverside, dated October 18, 1935.

Exhibit 571 4g. This is a copy of Treanor's telegraphic reply of even date.

Exhibit 674. This is a mimeographed copy of an executive letter from G. H. Reiter of the Institute to all members, dated December 14, 1935.

Exhibit 575 i. This is an original letter from G. F. Coffin on Cement Institute stationery to J. S. Young of Lehigh, dated January 4, 1936.

Exhibit 575 g-h. This is a copy of a telegram from George F. Coffin as President of the Cement Institute to the Hon. Jesse Jones, Chairman of the R.F.C. dated January 10, 1936.

Exhibit 575 a-b. This is an original letter from E. P. Lucas of Superior Portland Cement, Inc., to Hon. Jesse Jones, Chairman of the R.F.C., dated January 21, 1936.

5806 I also object to the introduction of this material on the ground that it relates to transactions which occurred during the interim period after N.R.A. and I submit that they are just as incompetent as evidence of transactions which took place during the code period proper.

5807 Mr. Leisure: Group 17 appears on page 5354 through to pages 5364 of the record.

In addition to the general objections which we have already made to all of the exhibits, which applies to this group, I wish to make the further objections on the ground that the offer of proof clearly indicates that the documents themselves are not material or relevant to any issue raised

in the complaint. These documents concern activities of The Cement Institute and its members to restrict and restrain sales of Porland cement through dealer channels and at dealer prices. The complaint itself contains no allegation with reference to the respondents, or any of them, having restricted the marketing areas of dealers, or placed restraints upon sales by dealers. These documents are, therefore, irrelevant and immaterial and do not tend to prove any of the issues in this case.

An examination of this material offered shows that most of the letters are written by dealers requesting respondents not to sell to certain dealers or to use a certain mark-up to protect dealers in a given locality. This file indicates considerable coercion by dealers to shape the
5808 policies of individual cement manufacturers. Even that material which directly concerns the acts or activities of any of the respondents is mere hearsay contained in letters written by third parties. The activities of individual dealers and of dealer associations may involve legal conesquences and sanctions applicable to dealers, but they are not binding on these respondents and are not properly admissible. It is not reasonable or proper to impute the consequences of such activities to respondents, who have no control over these people and cannot be responsible for their impulses and actions. I have dealt more fully with this problem in my general objections which I would like to incorporate here as though I made them at this point.

I wish to object to all of the documents contained in this file on the ground that they do not deal with any issues raised by the complaint, and I would like to make further objection to any and all pencil notations contained upon any or all of these documents.

This file was in complete confusion when it was submitted to us, for example, it contained the original and photostat of the same exhibit as separate and distinct offers. There was also an offer of one page of a letter although we are sure that the entire letter was offered in connection with the subpoena. I am not objecting
5809 to the documents in the same order in which they were offered because I found a number of documents relating to the same subject which it seems advisable to consider together, and we have accordingly marked them in that fashion.

I will hand the reporter the exhibit numbers, together with our objections to this group of exhibits.

Examiner Norwood: I want to thank you for grouping those. I found the same thing.

5809-a The list of exhibits is as follows:

549(2e)	549(k)	879(b)
549(d)	585(u)	547(b)
549(e)	585(t)	547(a)
549(w)	585(q)-(s)	549(2i)
549(u)	834(e)	914(d)
549(v)	549(2h)	914(g)
549(r)	549(2g)	914(f)
549(t)	549(j)	954(u)
549(s)	490	427(bb) and (cc)
549(q)	813(b)	947(161)-(16p)
823(a)	549(i)	562(15h)
549(p)	813(a)	562(15i)
734(jj)	549(c)	562(15y)
734(kk)	549(2d)	914(l)
734(ii)	547(k)	645(e) and (f)
576(6u)	547(l)	645(g)-(m)
576(6v)	547(i)	645(d)
576(6t)	547(j)	645(c)
576(6q)-(6s)	547(h)	645(b)
549(n)	549(h)	645(a)
549(o)	549(g)	914(e)
549(m)	549(f)	813(m)
877(h)	549(2c)	813(l)
577(g)	813(c)	549(3g)
549(l)	879(a)	813(n)

5809-b

731(6g)	867(7d)	473
549(2f)	867(7x)	731(4f)
549(3e)	731(6f)	873(m)
549(3b)	731(6e)	549(4m)
549(c)	1027(u)	813(w) and 813(v)
549(3a)	1027(t)	549(4i)
549(2l)	731(6d)	809(11u)
549(2m)	1027(v)	809(11t)
549(3p)	809(11s)	549(4k)
826(bbb)	809(11r)	549(4l)

581(f)
736(a) and (b)
736(c)
919(d), (e) and (b)
919(c)
420(ppp)
547(g)
547(f)
547(2r)
547(2q)
867(p)
867(o)
813(r)
813(q)
867(7e)
421
549(4n)
731(6b) and (6c)
737(ww)
737(aa)
737(bb)
737(cc)
819(bb)
933(x)
643(b) and (c)
870(2b)
873(c) and (d)
873(e) and (f)
873(g)
886(d)
819(aa)
819(x)
873(i)
731(2l) and (2m)
832(g)
832(h)
420(4i)
584(m)
813(z)
832(f)
832(e)
879(kk)
832(d)
832(c)

5809-c

872(b)
813(bb)
415(373)
867(7w)
867(7v)
549(3z)
549(4a)
549(4b)
549(4c)
549(4d)
549(4e)
549(4f)
549(4g)
822(2a)
816(d)
813(ff)
813(ee)
914(k)
416(rr)
549(4t)
947(10b)
947(10a)
919(2w)-(2z)
549(4u)
546(2o) and (2p)
914(j)
415(50)
914(z)
415(49)
914(h)
947(10f)
947(10h)
947(10z)
947(10y)
919(2t)
546(2l)
546(2k)
562(7u)
562(7s) and (7t)
458(a)-(c)
458(d) and (e)
933(7p) and (7q)
914(n) and (o)
914(m)
415(39)
415(40)
549(5c)
549(4y)
549(4z)
646(b)
867(7c)
867(7b)
867(6y)
867(7h)
867(7i)
867(6z) and (7a)
933(5e)
933(5d)
415(321)
241(m)—not offered
877(n)
877(m)
877(i) and (j)
886(e)
731(4v)
731(4u)
415(374)
209(m)—not offered
736(d)
734(hh)
832(b)
874(oo)
547(2d)
547(2c)
247(2h)—not offered

5809-d

547(2m)-(2o)
547(2i)
547(z)
547(y)
547(x)
547(2b)
547(2a)
867(7t) and (7u)
867(7s)
547(v)
547(u)
547(t)
574(v)—not offered
549(6b)
415(366)
415(367)
415(368)
415(545)
886(a) and (t)
547(q)
547(p)
547(o)
549(5x)
547(n)
547(m)

5810 To the following exhibits I wish specifically to object for the reasons stated:

Exhibit No. 549 5x is a carbon copy of a letter to M. Solliday, Builders Supply Dealers Association of Eastern Pennsylvania, from Vice President of the West Penn Cement Company, dated May 19, 1937. I object to the introduction of this material on the ground that it relates to the individual sales policy of The West Penn Company. It is therefore irrelevant and immaterial, and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549 5c is a carbon copy of letter to Mr. Rush, Eastern Pa. Builders Supply Association, from F. C. McKee, West Penn, dated October 19, 1935. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to the status of a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5811 Exhibit No. 549-4u is a letter to F. C. McKee, West Penn, from George C. Murray, Ohio Builders' Supply Association, August 19, 1935. I object to the introduction of this material on the ground that it relates to an answer to West Penn's inquiry as to a list of Association members. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-4t is a carbon copy of a letter to George C. Murray of Ohio Builders' Supply Association from F. C. McKee of West Penn, dated August 14, 1935. I object to the introduction of this material on the ground that it relates to a request that addressee send West Penn a list of recognized dealers for state of Ohio. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-f is a letter to Edward C. Kinney of Ohio Builders' Supply Association from Hazel A.
5812 Ellenberger of West Penn, dated August 18, 1933. I object to the introduction of this material on the ground that it relates to a request that addressee forward Association Roster to West Penn. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-3p is a carbon copy of letter to E. C. Kinney, of Ohio Builders' Supply Dealers Association, from F. C. McKee, of West Penn, dated May 18, 1934. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to status of Kelley Island Lime and Transport Com-
5813 pany. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-4k is a carbon copy of letter to George C. Murray of Ohio Builders' Supply Association, from F. C. McKee, of West Penn, dated February 15, 1935. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to dealer status of four companies. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-4L is a letter to George C. Murray of Ohio Builders' Supply Association, from F. C. McKee of West Penn, dated February 19, 1935. I object to the introduction of this material on the ground that it relates

to an inquiry of an individual company as to the standing of a dealer with a typewritten message at bottom of sheet signed H. Campbell, referring inquiry to B. E. Reid, Cleveland, Ohio. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-s is a letter to F. C. McKee of West Penn from E. C. Kenney of Ohio Builders' Supply Association, dated February 4, 1933. I object to this on the ground that it is written by a non-respondent. Also I object to
5814 the introduction of this material on the ground that it relates to a differential proposed for quotations on Columbus Post Office by dealer association. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-r is a letter to F. C. McKee of West Penn, from E. C. Kinney of Ohio Builders' Supply Association, dated January 27, 1933. I object to the introduction of this material on the ground that it relates to a coercive dealer request that West Penn quote through dealers on state highway work in Columbus. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-v is a carbon copy of letter to E. C. Kinney of Ohio Builders' Supply Association, from F. C. McKee of West Penn, dated January 27, 1933. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to differential dealers request on Columbus Post Office. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-u is a carbon copy of letter to E. C. Kinney of Ohio Builders' Supply Association, from F. C.
5815 McKee of West Penn, dated January 24, 1933. I object to the introduction of this material on the ground that it relates to a statement of an individual company policy on quotations for greater Columbus market. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5816 Exhibit No. 549-4m is a carbon copy of letter to V. R. Corron of New York State Builders' Supply Association, from F. C. McKee of West Penn, dated March 8, 1935. I object to the introduction of this material on the ground that it relates to the inquiry of an individual

company as to the dealer status of a named company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-3g is a carbon copy of letter to V. R. Corrou of New York State Builders' Supply Association from F. C. McKee of West Penn, dated April 6, 1934. I must call attention to the fact that learned counsel for the Commission has offered with this carbon copy a photostat of same. I submit that nothing can be gained by this offer save confusion of the record with unnecessary surplusage. For this reason I am compelled to request that Counsel for the Commission withdraw the offer of one of these documents. I object to the introduction of this material on the ground that it relates to an inquiry of an individual
5817 company as to the dealer status of a named company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-t is a carbon copy of a letter to V. R. Corrou of New York State Builders' Supply Association, from T. C. Fleming of West Penn, dated February 2, 1933. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to the corrections for dealer directory of New York State. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Exhibit No. 549-q is a letter to West Penn Cement Company from V. R. Corrou of New York State Builders' Supply Association, dated February 20, 1933. I object to this on the ground that it is written by a non-respondent. Also, I object to the introduction of this material on the ground that it relates to the revision and correction of a dealer directory of New York dealers. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-p is a carbon copy of letter to V. R. Corrou of New York State Builders' Supply Association
5818 from T. C. Fleming of West Penn, dated February 28, 1933, purporting to enclosed copy of New York State Building Material Dealer Directory. I object to the introduction of this material on the ground that it relates to the revision of a dealer directory. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-c is a carbon copy of letter to V. R. Cor-

rou of New York State Builders' Supply Association from F. C. McKee of West Penn, dated March 9, 1933. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to the status of one who claims to be a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-L is a letter to F. C. McKee of West Penn, from V. R. Corrou of New York State Builders' Supply Association, dated May 8, 1933. I object to the introduction of this material on the ground that it relates to the status of one who claims to be a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-k is a carbon copy of a letter to V. R. Corrou of New York State Builders' Supply Associa-
5819 tion from F. C. McKee of West Penn, dated May 10, 1933. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to the status of one who claims to be a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-n is a carbon copy of a letter to V. R. Corrou of New York State Builders' Supply Association from T. C. Fleming of West Penn, dated April 3, 1933. I object to the introduction of this material on the ground that it relates to a revision of the New York State Dealer Directory. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-m is a letter to West Penn Cement Company from V. R. Corrou of New York State Builders' Supply Association, dated April 4, 1933. I object to the introduction of this material on the ground that it relates to a revision of the New York State Dealer Directory. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 834-e is a carbon copy of a letter to H.
5820 S. Chaffee of New York State Builders' Supply Association from J. C. B., Vice-president (probably Mr. Bowen of Lehigh), dated June 26, 1933. I object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I renew my objection that this is N.R.A. Code material. I further ob-

ject to the introduction of this material on the ground that it relates to the proposed Code of Trade Practice for the Cement industry. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 914-g is a photostat of carbon copy of a letter to V. R. Corrou, New York State Builders' Supply Association from R. M. Beaton of Universal-Atlas, dated November 13, 1933. I renew my objection that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to the organization of trading areas under Builders' Supply Trade Industry Code. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 914-f is a photostat of a letter to R. M. Beaton of Universal Atlas from V. R. Corrou, Code Authority for Builders' Supply Industry, November 14, 1933.

5821 I renew my objection that this is N.R.A. Code material. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to the formation of trading areas under Builders' Supply Code Authority. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 914-e is a photostatic of a carbon copy of a letter to V. R. Carrou, New York State Builders' Supply Association, from R. M. Beaton of Universal Atlas dated April 5, 1934. I renew my objection that this is N.R.A. Code material. I object to the introduction of this material on the ground that it relates to the formation of trading areas with questions as to the interpretation of the dealers' code. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-4i is a carbon copy of a letter to Mr. Rush, Builders Supply Dealers of Eastern Pennsylvania from F. C. McKee, of West Penn, dated February 9, 1935. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as

to dealer association opinion of direct sale to a

5822 dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 549-g is a carbon copy of a letter to Nellie Solliday, Building Material Dealers' Association of Eastern Pennsylvania, from F. C. McKee, of West Penn, dated August 16, 1933. I object to the introduction of this material on the ground that it relates to an individual company's request for the latest list of associated dealers in Eastern Pennsylvania.

Exhibit No. 549-i is a carbon copy of a letter to H. F. Richter, Building Material Dealers Association of Eastern Pennsylvania, from F. C. McKee of West Penn, dated August 4, 1933. Exhibits No. 549-c, 549-h are in answer to the above document to F. C. McKee of West Penn from N. Solliday of Building Material Dealers Association of Eastern Pennsylvania, dated August 8, and 14, 1933. I object to the introduction of this material on the ground that it relates to the dealer status of a man in Conghgham, Pennsylvania. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 734-2h is a telegram to Hermitage Cement Co. from Mississippi Retail Lumber Dealers' Association,
dated July 7, 1936. I object to the introduction of
5823 this material on the ground that it relates to a dealer association request that Hermitage withhold shipment to Tupelo pending dealer approval because trucking is involved. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I object to this also on the ground that it is written by a non-respondent. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document.

5825 Exhibit No. 576-6u, 6v is a photostatic carbon copy of a letter to C. S. McArdle of Universal Atlas from Walter Pratt of Mississippi Retail Lumber Dealers' Association, dated March 21, 1933, enclosing a copy of a resolution on recognition of dealers passed by addressor association. I object to the introduction of this material on the ground that it relates to recognition of dealers under addressor's dealer distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Also I object to this on the ground that it is written by a non-respondent. I object further to it on the ground that it is a duplicate of Exhibit 734-2j, 2k, which is also offered. Its admission,

therefore, would serve only to encumber the record unnecessarily and I therefore request that either this offer, or that of Exhibit 576-6u, 6v be withdrawn.

Exhibit No. 576-6t is a photostat of a letter to Walter Pratt, Mississippi Retail Lumber Dealers' Association, from C. S. McArdle of Universal Atlas, dated March 22, 1933. I object to the introduction of this material on the ground that it relates to dealer distribution policy of the addressor. It is therefore irrelevant and immaterial
5826 and does not tend to prove any of the allegations of the complaint.

Exhibit No. 813-2f, 2e is a letter from Emmie Geeslin, Georgia Retail Lumber & Building Material Association of Macon, Georgia, to Hermitage, and reply by E. W. McGovern of Hermitage, dated July 22, 1935 and July 25, 1935. I object to the introduction of this material on the ground that it relates to association dealer differential policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I further object to Exhibit 813-2f on the ground that it is written by a non-respondent.

Exhibit No. 813-w, v is a letter from Emmie Geeslin, Georgia Retail Lumber & Building Supply Associa-
5827 tion to Hermitage, dated January 12, 1935, and the reply of E. W. McGovern of Hermitage, dated January 14, 1935. I object to the introduction of this material on the ground that it relates to association dealer differential policy. I further object to Exhibit 813-w on the ground that it is written by a non-resident.

Exhibit 547-k is a carbon copy of a letter from E. W. McGovern of Hermitage to F. L. Jaeger of Marquette, dated August 1, 1933. I object to the introduction of this material on the ground that it relates to congratulations on Mr. Jaeger's promotion. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5829 Exhibit 549-4y is a letter from H. W. Updike, retail dealer, to West Penn Portland Cement Company, dated October 7, 1935. I object to this on the ground that it is written by a non-respondent. Also I object to the introduction of this material on the ground that it relates to a request for a quotation of a named quantity of cement. It is therefore irrelevant aand immaterial and does not
5830 tend to prove any of the allegations of the complaint.

Exhibit 549-4z is a carbon copy of a letter from F. C. McKee of West Penn to George C. Murray of Ohio Builders' Supply Association, dated October 23, 1935. I object to the introduction of this material on the ground that it relates to an individual sales policy of the West Penn Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit No. 933-7p, 7q is a letter from W. B. Elcock of Southern States, to J. C. Bowen of Lehigh, dated October 3, 1935. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I further object to the introduction of this material on the ground that it relates to dealer distribution policy and dealer pressure. It is therefore ir-
relevant and immaterial and does not tend to prove
5831 any of the allegations of the complaint.

Exhibit No. 886-s, t is a photostatic copy of a letter from A. O. Stark of Universal Atlas to G. H. Reiter of Cement Institute, dated March 15, 1937. I object to the introduction of this material on the ground that it relates to brands of foreign cement sold in port cities. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. Further, this document relates to activities directed toward securing tariff relief against imported cement. I object to its introduction on the ground that any citizen or group of citizens may protest or petition against the tariff policy of these United States.

Exhibit No. 919-2t is a carbon copy of a letter from J. F. Neylan of International, to G. H. Reiter of the Cement Institute, dated September 10, 1935. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer.

Exhibit 832-b is a photostatic copy of a letter from J. A. Keller of the Pacific Coast Cement Institute, to T. L.
Hughes of Lehigh, dated September 2, 1936. Uniden-
5832 tified pencil notations appear on the face of the exhibit.

I object to this, on the ground that it is written by a non-respondent. I further object to the introduction of this material, on the ground that it relates to the dealer association mark ups in Southern California. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 874-2o is a carbon copy of a letter from H. O. Warner, of Colorado, to James A. Keller, of Pacific Coast Cement Institute, dated September 8, 1936. I object to this, on the ground that it is written by a non-respondent. I object to the introduction of this material, on the ground tha it relates to the dealer differential observed by the Colorado Company in parts of Colorado, Montana and Utah. It is therefore irrelevant and immaterial and does not stand to prove any of the allegations of the complaint.

Exhibit 867-7t, 7u is a letter from L. I. MacQueen of The MacQueen Service, to F. M. Coogan, of Alpha, dated November 24, 1936. I object to this on the ground that it is written by a non-respondent. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. Further, I object to the introduction of this material on the
5833 ground that it relates to comments on Alpha's dealer distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 867-7s is a carbon copy of a letter from F. M. Coogan, of Alpha, to L. I. MacQueen, of MacQueen Service, dated January 25, 1937. I object to this document on the ground that it is written to a non-respondent and is not binding on the other respondents in this case. I further object to the introduction of this material on the the ground that it relates to Alpha's dealers distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5834 Commission's Exhibit 867-7i is a carbon copy of a letter from M. H. Wilhelms of Alpha to W. G. Joyce of Illinois Lumber & Material Dealers Association, Inc., dated December 6, 1935, and Commission's Exhibit 867-7h is a letter from J. F. Bryan of Illinois Lumber and Material Dealers Association, Inc., to M. H. Wilhelms of Alpha, dated December 7, 1935, in answer to Mr. Wilhelms' letter of December 6. I object to the introduction of this material, on the ground that it relates to a request for additional copies of mimeographed instructions sent out to members by the dealer association and to the answer to this request stating that such additional copies have been mailed under separte cover. It is therefore irrelevant and

immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 819-2a is a carbon copy of a letter from L. E. DeCamp of Medusa to Illinois Lumber & Material Dealers Association, Inc., dated March 28, 1935. I object to the introduction of this material, on the ground that it relates to the acknowledgment of receipt of an Illinois dealer directory. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 819-2b is a copy of a mimeographed letter from the Illinois Lumber & Material
5835 Dealers Association, Inc., addressed to "Dear Friend," undated. I object to the introduction of this material, on the ground that it relates to the enclosure of a copy of the 1935 Illinois dealer directory. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 867-7e is a mimeographed letter from the Illinois Lumber & Material Dealers Association, Inc., to Alpha Portland Cement Company, dated October 17, 1934.. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material on the ground that it relates to a request of the dealer association that Alpha reply with a statement on principle of dealer distribution. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 867-7d is a carbon copy of a letter from E. J. Moors of Alpha to the Illinois Lumber & Material Dealers Association, Inc., dated October 18, 1934, in reply to the dealer association letter of October 17. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material on the ground that it relates to the Alpha distribution policy. It is therefore irrelevant and immaterial, and does not
5836 tend to prove any of the allegations of the complaint.

Commission's Exhibit 867 7x is a carbon copy of a letter from C. R. Smith of Alpha to Illinois Lumber & Material Dealers Association, Inc., dated November 1, 1934. I renew my objection that this is N. R. A. Code material. I also object to the introduction of this material on the ground that it relates to the distribution policy of the Alpha Company. It is therefore irrelevant and immaterial

and does not tend to prove any of the allegations of the complaint.

5837 Commission's Exhibit 549 3a is a carbon copy of a letter from F. C. McKee of West Penn to Harris Mitchell of Virginia Lumber & Building Supply Dealers Association, dated May 9, 1934. I object to the introduction of this material, on the ground that it relates to a request of an individual company for a list of building supply dealers in Viriginia. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5838 Commission's Exhibit 549 2i is a carbon copy of a letter from F. C. McKee of West Penn to Harris Mitchell of Virginia Lumber & Building Supply Dealers Association, dated October 11, 1933. I object to the introduction of this material, on the ground that it relates to refinement of West Penn Dealer distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 549 2e is a carbon copy of a letter from F. C. McKee of West Penn to Harris Mitchell of Virginia Lumber & Building Supply Dealers Association, dated January 6, 1933. I object to the introduction of this material, on the ground that it relates to a statement of West Penn's intention with regard to quotations for three bridges at Richmond. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 549 2h is a letter from Harris

5839 Mitchell of Virginia Lumber & Building Supply Dealers Association to F. C. McKee of West Penn, dated July 3, 1933. I object to the introduction of this material, on the ground that it relates to a dealer association request that West Penn quote through dealers on a Charlottesville project. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 549 2g is a carbon copy of a letter from F. C. McKee of West Penn to Harris Mitchell of Virginia Lumber & Building Supply Dealers Association, dated July 12, 1933. I object to the introduction of this material, on the ground that it relates to an individual company inquiry as to a differential which the Charlottesville dealers

desire. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 731 4v is a letter from D. S. Montgomery of Wisconsin Retail Lumbermen's Association to Alpha Portland Cement Company, dated April 13, 1936, and Commission's Exhibit 741 4u is in answer thereto, being a carbon copy of a letter from C. R. Smith of Alpha to D. S. Montgomery of Wisconsin Retail Lumbermen's Association, dated April 14, 1936. Unidentified pencil notations appear on the face of the exhibit. I also object
5840 to the introduction of this material on the ground that it relates to a request of the dealer association for maintenance of dealer differential, with reply thereto that Alpha individually tries to maintain same. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5844 Exhibits 549-2m, 2L are carbon copies of letter from F. C. McKee of West Penn to H. C. Thomson, Lime and Cement Exchange, dated May 10, 1934, and May 9, 1934, respectively. I object to the introduction of this material on the ground that it relates to request by an individual company for a list of dealers. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5846 Exhibit 546-2L is a carbon copy of a letter from A. W. Pearson of Medusa to E. E. Woods of Southwestern Lumbermen's Ass'n., dated September 11,
5847 1935. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to an individual company's dealer distribution policy. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 546-2k is a letter from E. E. Woods of Southwestern Lumbermen's Ass'n. to L. E. DeCamp of Medusa, dated September 12, 1935. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to an individual company's dealer distribution policy. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also object to this on the ground that it is written by a non-respondent.

Exhibit 546-2o, 2p is a letter from E. E. Woods of South-

western Lumbermen's Ass'n. to Medusa, dated August 20, 1935. I object to the introduction of this material on the ground that it relates to a dealer association's recommendation that the company investigate two deealers. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint. I also objest to this on the ground that it is written by a non-respondent.

5848 Exhibit 816-d is a carbon copy of a letter from P. A. Thompson of Oklahoma, to J. R. Nuckles of Southwestern Lumbermen's Ass'n., dated July 25, 1935. I object to the introduction of this material on the ground that it relates to an individual company's bid on cement for Government requirements at Fort Riley. Is is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 737-2w is a carbon copy of a letter from P. A. Thompson, of Oklahoma, to E. E. Woods, of Southwestern Lumbermen's Ass'n., dated March 12, 1935. I object to the introduction of this material on the ground that it relates to an individual company's marketing policy. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5849 Exhibit 581-f is a carbon copy of a letter from H. O. Warner of Colorado, to R. S. Grier of Mountain States Lumber Dealer's Ass'n., dated June 8, 1934. I renew
5850 my objection that this is N. R. A. material. I object to the introduction of this material on the ground that it relates to an individual company's policy with respect to dealer cost protection. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 547-g, f is a letter from W. W. Milling, of Ala. Lbr. & Bldg. Material Ass'n. to Hermitage and a carbon copy reply of E. W. McGovern of Hermitage, thereto, dated August 11, 1934 and August 15, 1934, respectively. I renew my objection that this is N. R. A. Code material. I object to the introduction of this material on the ground that it relates to Hermitage's individual policy on dealer cost protection. It is, therefore, irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5851 Exhibit 547-2i is a carbon copy of a letter from E.

W. McGovern of Hermitage to Kentucky Retail Lbr. Dealers' Ass'n., dated November 9, 1936. I object to the introduction of this material on the ground that it relates to Hermitage's individual dealer distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 547-2d is a telegram from the Kentucky Retail Lbr. Dealer's Ass'n. to E. W. McGovern of Hermitage, dated October 30, 1936. I object to the introduction of this material on the ground that it relates to an associa-
5852 tion request for information as to an order by a certain dealer. It is therefore irrelevant and immaterial and does not tend to prove aany of the allegations of the complaint. I object to this further on the ground that it is written by a non-respondent.

Exhibit 547-2c is a carbon copy of a letter from E. W. McGovern of Hermitage to the Kentucky Retail Lbr. Dealer's Ass'n., dated October 30, 1936, in reply to the telegram of October 30, 1936. I object to the introduction of this material on the ground that it relates to a company answer to an association request for information as to an order by a certain dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5853 Exhibit 562-7s, 7t is a carbon copy of a letter from W. H. Leonard of Riverside to Chris Totten of Arizona Retail Lbr. & Bldrs. Supply Ass'n., dated September 25, 1935. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I further object to the introduction of this material on the ground that it relates to Riverside's dealer distribution policy with respect to a particular Forestry Service invitation to bid.

I have no objections, in addition to the general objections and to the group objections applicable to this group, to the following individual company announcements of their particular marketing and sales policies contained in the following exhibits:

Commission's Exhibits	427 2b, 2c	886 D
	873 e, f, g	819 x
	870 2b	873 i
	731 4f	736 d
	873 m	813 2b

However, the marketing policy of the Lehigh Portland Cement Company has been here offered in duplicate, to wit: Exhibits 643 b, c and 873 c, d. To prevent cluttering up the Record unnecessarily, I must object to this
5854 duplicate offer and request that Counsel for the Commission withdraw one copy of this policy.

To the following list of documents I renew my objection that this is N. R. A. Code material. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint:

Commission's Exhibits 826-3b
585-q, r, s, t, u
736-a, b, c
645-a, b, c, d, e, f, g
549-2c
879-a, b
954-u
947-16L, 16m, 16n, 16o, 16p

Exhibit 645 h through m is a letter from 9 Pacific Coast companies to B. H. Rader, Chairman of the Code Authority in March, 1934. To this document I renew my objection that it is N. R. A. Code material. Furthermore, it involves proposals and negotiations which were never terminated by a final agreement. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 919-d, e, is a letter from C. Baumberger, Jr., of San Antonio, to L. R. Ferguson of Lone Star, dated August 3, 1934, enclosing Resolutions of the Lumber-
5855 men's Association of Texas. I renew my objection that this is N. R. A. Code material. I also object on the ground that it is not shown that anything was done pursuant to the recommendations of this document. I object to the introduction of this material on the ground that it relates to a provision proposed for the Code of Fair Competition of the Portland Cement Industry. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 919-b, c, is a carbon copy of a letter from L. R. Ferguson of Lone Star to Charles Baumberger, Jr., of San Antonio, dated August 6, 1934. I renew my objection that this is N. R. A. Code material. I also object on the ground that it is not shown that anything was done

pursuant to the recommendations of this document. Further, I object to the introduction of this material on the ground that it relates to a provision proposed for the Code of Fair Competition of the Portland Cement Industry. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 947-10b is a letter from C. A. Brooke of Monarch to H. O. Warner of Colorado, dated August 13, 1935. I renew my objection that this relates to the interim period which followed the Schechter decision. I object
to the introduction of this material on the ground that
5856 it relates to sales policies in effect in Texas, Colorado,
and New Mexico. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 947-10a is a carbon copy of a letter from H. O. Warner of Colorado to C. A. Brooke of Monarch, dated August 15, 1935. I renew my objection that this relates to the interim period which followed the Schechter decision. I object to the introduction of this material on the ground that it relates to the individual sales policy of the Monarch company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 421 is a letter from F. C. Mooney of Wolverine to A. J. Rooney of Huron, dated December 17, 1934. I object to the introduction of this material on the ground that it relates to a bid on a job for which Wolverine is not interested in quoting. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 547-j is a letter from F. L. Jaeger of Marquette to E. W. McGovern of Hermitage, dated August 9, 1933. I object to the introduction of this material on the ground that it relates to acknowledgment of receipt of congratu-
lations and good wishes on Jaeger's promotion. It
5857 is therefore irrelevant and immaterial and does not
tend to prove any of the allegations of the complaint.

Exhibit 547-l is a carbon copy of a telegram from E. W. McGovern of Hermitage to F. L. Jaeger of Marquette, dated February 4, 1933. I object to the introduction of this telegram since it is not intelligible on its face and should be explained by oral testimony. If the material does relate to the dealer differential policy of the Her-

mitage Company, it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 832-c is a letter from Harold M. Scott, as Trustee of the Institute, to B. H. Rader of Lehigh, dated May 2, 1935. I object to the introduction of this material on the ground that it relates to the appointment of Mr. Chaffee to handle complaints for the National Federation of Builders' Supply Association. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 832-d is a letter from M. C. Monday of Cumberland to B. H. Rader of Lehigh, dated April 30, 1935. I object to the introduction of this material on the ground that it relates to the appointment of Mr. Chaffee to handle complaints for the National Federation of Builders'
5858 Supply Association. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 832-e is a letter from C. B. Condon of Hawkeye to B. H. Rader of Lehigh, dated April 26, 1935. I object to the introduction of this material on the ground that it relates to the appointment of Mr. Chaffee to handle complaints for the National Federation of Builders' Supply Association. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 832-g is a carbon copy of a letter from B. H. Rader of Lehigh to eleven named gentlemen, dated April 24, 1935. I object to the introduction of this material on the ground that it relates to the appointment of Mr. Chaffee to handle complaints for the Natonal Federation of Builders' Supply Association. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5859 Exhibit 547-i is a carbon copy of a letter from E. W. McGovern, of Hermitage, to F. L. Jaeger, of Marquette, dated August 9, 1933. I object to the introduction of this material on the ground that it relates to the dealer differential policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 547-h is a letter from F. L. Jaeger, of Marquette, to E. W. McGovern, of Hermitage, dated August 19, 1933.

I object to the introduction of this material on the ground that it relates to the dealer differential policy of the Marquette Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

To the following list of documents, I would like to press the objection that these communications were efforts of members of the industry and former Code Authority members to comply with requests of Government officials that practices instituted under the N. R. A. be continued. I submit that during this interim period, members of the industry were attempting to cooperate with officials of the Government at the request of such officials. This material should, therefore, play no part in the present
5860 hearing, and is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint:

Commission's Exhibits 415-49
415-50
947-10f, 10h, 10z, 10y.

To the following exhibits I wish to make no objection other than my general objections and the objections to the group:

Commission's Exhibits 415-321
415-366
415-367
415-368
415-545
415-373

I must call your Honor's attention to the fact that Exhibits 415-39 and 415-40, offered in evidence on April 8, 1938, are duplicates of Exhibits 1022w, x, which have already been received in evidence. Likewise, Exhibit 919-2w-2z, offered in evidence on April 8, 1938, is a duplicate of Exhibit 1022 p-s, which has already been received in evidence. In addition to objections above stated, I heartily object to this unnecessary expansion of the Record and request that Counsel for the Commission withdraw the offers.

Exhibit 419-j is a photostatic copy of a letter from P. G. Frampton, of the West Virginia Lumber and Builders Supply Dealers Association, to Universal Atlas Cement

Company, dated August 23, 1935. Unidentified pen-
5861 cil notation appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to a dealer association inquiry concerning Universal-Atlas dealer differential policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 914-z (this document appears to have been originally numbered 914-i) is a photostatic copy of a carbon copy of a letter from F. A. Brine, of Universal-Atlas, to P. G. Frampton, of the West Virginia Lumber and Builders Supply Dealers Association, dated August 27, 1937. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to the individual company policy of Universal-Atlas on dealer differentials. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5862 Exhibit 549-4n is a carbon copy of a letter from F. C. McKee, of West Penn, to B. E. Reed, of the Building Supply Dealers Association, dated March 9, 1935. I object to the introduction of this material on the ground that it relates to the inquiry of an individual company as to the dealer status of a named company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 549-3c is a carbon copy of a letter from
5863 F. C. McKee, of West Penn to E. C. Kinney, of Ohio Builders Supply Association, dated May 9, 1934. I object to the introduction of this material on the ground that it relates to the request of an individual company for a list of dealers. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 549-j is a carbon copy of a letter from F. C. McKee, of West Penn, to B. E. Reed, of the Building Material Institute, dated July 29, 1933. I object to the introduction of this material on the ground that it relates to the acknowledgment of receipt of requests as to dealer differential. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 823-a is a carbon copy of a letter from the West Penn Cement Company to B. E. Reed, of the Build-

ing Material Institute, dated February 25, 1935. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to an inquiry of an individual company as to the local status of a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5864 Exhibit 933-5e is a letter from H. S. Chaffee, of the Globe Plaster Company, to B. H. Rader, of Lehigh, dated January 7, 1936. I object to the introduction of this material on the ground that it relates to a dealer association request for advice on dealer differential problem. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 933-5d is a carbon copy of a letter from B. H. Rader, of Lehigh, to Harlow S. Chaffee, of the Globe Plaster Company, dated January 8, 1936. Unidentified pencil notations appear on the face of the exhibit. I object to the introduction of this material on the ground that it relates to Mr. Rader's inability to offer constructive suggestions on dealer differential problem. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 832-f is a letter from H. S. Chaffee, of the Globe Plaster Company, to B. H. Rader, of Lehigh, dated April 26, 1935. I object for the reason that it contains statements of opinion and hearsay regarding facts not within the knowledge of the writer. I also object to the introduction of this material on the ground that it relates to

5865 Mr. Chaffee's acknowledgment and thanks for newspaper clippings, etc., which Mr. Rader sent him. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 877-n is a telegram from the Textile Lumber Dealers Association to Hermitage Cement Company, dated April 21, 1936. I object to the introduction of this material on the ground that it relates to the protest of a dealers association against acts of an individual cement company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 877-m is a form letter from the Textile Lumber Dealers Association to the Hermitage Cement Company, dated March 12, 1936. I object to the introduction of this

material on the ground that it relates to the request of a dealer association for assistance from an individual cement company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5866 Exhibit 877-i is an envelope stamped and mailed to the Textile Lumber Dealers Association, but returned to Hermitage Portland Cement Company because the addressee is "not in directory." I object to the introduction of this document on the grounds that it is irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 877-j is a letter from E. W. McGovern, of Hermitage, to the Textile Lumber Dealers Association, dated March 13, 1936. I object to the introduction of this material on the ground that it relates to a denial that the Hermitage Company has placed the order in question. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 415-374 is a carbon copy of a letter from G. H. Reiter, of the Institute, to R. W. Slagle, of Indiana Lumber and Builders Supply Association, dated June 4, 1936. I object to the introduction of this material on the ground that it relates to an acknowledgment of receipt of information concerning Indiana State Procurement Office purchases. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 867-7w is a letter from Max Critchfield, of the Indiana Lumber and Builders Supply Association, to
5867 Alpha Portland Cement Company, dated May 29, 1935. I object to the introduction of this material on the ground that it relates to a dealer association interpretation of the Alpha Company's sales policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 867-7v is a carbon copy of a letter from A. N. Fellows, of Alpha, to the Indiana Lumber and Builders Supply Association, dated May 31, 1935. I object to the introduction of this material on the ground that it relates to the Alpha Company's interpretation of its individual sales policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5868 Exhibit 547-a is a carbon copy of a letter from E. W. McGovern, of Hermitage, to W. B. Lensing, of Lensing Brothers, Inc., dated September 22, 1933. I object for the reason that contains statements of opinion
5869 and hearsay regarding facts not within the knowledge of the writer. Also, I object to the introduction of this material on the ground that it relates to the individual distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 547-b is a letter from W. B. Lensing, of the Indiana Builders Supply Association to Hermitage Portland Cement Company, dated September 20, 1933. I object to the introduction of this material on the ground that it relates to a dealer association inquiry as to the individual distribution policy of the Hermtage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Exhibit 877-g is a carbon copy of a letter from E. W. McGovern, of Hermitage, to R. H. Hildebrand, of the
5870 Indiana Builders Supply Association, dated May 5, 1933. I object to the introduction of this material on the ground that it relates to a statement of the individual distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 731 6f is a letter from W. H. Badeaux of the Iowa Association of Lumber and Building Material Dealers to Sales Manager of Alpha Portland Cement Company, dated November 5, 1934. I object to
5871 the introduction of this material, on the ground that it relates to the dealer distribution policy of an individual company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 731 6e is a carbon copy of a letter from C. R. Smith of Alpha to the Iowa Association of Lumber and Building Material Dealers, dated November 7, 1934. I object to the introduction of this material, on the ground that it relates to a distribution policy of the Alpha Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 731 6g is a carbon copy of a letter

from A. M. Fellows of Alpha to the Iowa Association of Lumber and Building Material Dealers, dated April 12, 1934. I object to the introduction of this material,
5872 on the ground that it relates to the distribution policy of the Alpha Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 549 2f is a carbon copy of a letter from T. C. Flemming of West Penn to H. F. Richter of Building Material Dealers Association of Eastern Pennsylvania, dated April 16, 1934. I object to the introduction of this material, on the ground that it relates to an inquiry of an individual company as to the status of a dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5873 Commission's Exhibit 549 6b is a carbon copy of a letter from F. C. McKee of West Penn to Edward T. Snook of the New Jersey Mason Material Dealers Association, dated January 26, 1937. I object to the introduction of this material, on the ground that it relates to the request of an individual company for a list of the New Jersey dealers. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5874 Commission's Exhibit 562 15h-2 is a letter from F. L. Denniston of Los Angeles County Building Material Dealers Association to Riverside Cement Company, dated March 14, 1934. I object to the introduction of this material on the ground that it relates to an inquiry from a dealer association as to the Riverside distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 562 15i-1 is a carbon copy of a letter from W. H. Leonard of Riverside to Los Angeles County Building Material Dealers Association, dated March 12, 1934. I object to the introduction of this material, on the ground that it relates to interpretation of the Riverside distribution policy. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5878 Commission's Exhibit 547 p is a carbon copy of a
5879 letter from E. W. McGovern of Hermitage to Kentucky Lumber & Supply Association, dated March 22,

1937. I object to the introduction of this material, on the ground that it relates to the Hermitage Company's reaction to dealer convention resolutions concerning distribution of cement. Is is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5880 Commission's Exhibit 547 m is a carbon copy of a letter from E. W. McGovern of Hermitage to Leo Klarer, Jr., of Kentucky Lumber & Supply Association, dated June 23, 1937. I object to the introduction of this material, on the ground that it relates to the distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5881 Commission's Exhibit 547 v is a carbon copy of a letter from E. W. McGovern of Hermitage to Leo Klarer, Jr., of Kentucky Retail Lumber Dealers Association, dated January 6, 1937. I object to this document because it deals with blended cement, which has no proper place in this hearing. I also object to the introduction of this material on the ground that it relates to the distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 n is a letter from Leo Klarer, Jr., of Kentucky Retail Lumber Dealers Association, to E. W. McGovern of Hermitage, dated January 19, 1937. I object to this document because of a discussion therein of blended cement, which has no concern with the issues in this hearing. I also object to the introduction of this material on the ground that it relates to the distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 t is a carbon copy of a letter from E. W. McGovern of Hermitage to Kentucky Retail Lumber Dealers Association, dated Jaanuary 21,

5882 1937. I object to the offer of this document, which deals with blended cement. I also object to the introduction of this material on the ground that it relates to the dealer distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 2b is a letter from Leo Klarer,

Jr., of Kentucky Retail Lumber Dealers Association, to the Hermitage Portland Cement Company, dated December 9, 1936. I object to the introduction of this material, on the ground that it relates to a dealer association request that the Hermitage Company decline to deal with a named dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 2a is a carbon copy of a letter from E. W. McGovern of Hermitage to Kentucky Retail Lumber Dealers Association, dated December 10, 1936. I object to the introduction of this material, on the ground that it relates to the distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 z is a letter from Leo
5883 Klarer, Jr., of Kentucky Retail Lumber Dealers Association, to the Hermitage Portland Cement Company, dated December 9, 1936. I object to the introduction of this material, on the ground that it relates to the distribution policy of the Hermitage Company with regard to a Kentucky dealer. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

Commission's Exhibit 547 y is a carbon copy of a letter from E. W. McGovern of Hermitage to Kentucky Retail Lumber Dealers Association, dated December 10, 1936. I object to the introduction of this material, on the ground that it relates to the distribution policy of the Hermitage Company. It is therefore irrelevant and immaterial and does not tend to prove any of the allegations of the complaint.

5886 That completes our objections, Your Honor. As to the ruling on the objections I of course realize Your Honor wants to consider the documents very carefully. As to the ruling on the point of law which I raised under the fourth and fifth amendments, I suppose we should have a ruling on the record on that. We ask that all papers be returned to us; as to the others, I assume Your Honor will want time to consider them.

Examiner Norwood: I think I have already ruled on that. I gave the respondents the privilege, after learning the condition—that is, I gave the people who received
5887 the subpoenas the permission of withdrawing their offer after they had learned the conditions, the man-

ner in which we treat them here, and after that I refused to return them. So the ruling is the same with regard to that.

5891 Mr. Leisure: Just to complete my objections here, Your Honor, these objections which I have stated have dealt principally with the relevancy and materiality, and I want to make our position clear that respondents in no way waive objections to the competency of any documents included in the exhibits which were offered by the Commission on April 7 and 8. We urge that none of these documents are admissible on the ground that they are incompetent as well as being irrelevant and immaterial. We cite all of the objections we have made heretofore to Exhibit 1043 on the record.

Now as I understand the record, Your Honor is going to consider our objections, and as to our statement on the law under the Fourth and Fifth Amendments, that motion is denied, the return of those exhibits?

Examiner Norwood: Yes.

5915 BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
Cement Institute, et al. } Docket No. 3167.

OBJECTIONS OF RESPONDENT MARQUETTE CEMENT MANUFACTURING COMPANY TO CERTAIN EXHIBITS OFFERED ON BEHALF OF THE COMMISSION.

Now comes the Respondent, Marquette Cement Manufacturing Company, by its attorneys Edward A. Zimmerman and H. W. Norman, and present objections to Commission's exhibits hereinafter listed, such objections being supplemental and in addition to any and all other objections made to said exhibits.

Objection 1. The exhibits hereinafter specified have been offered in violation of, and not in conformity with, Rule XIX of the Federal Trade Commission.

Objection 2. As to the exhibits relating to the Tennessee Valley Authority and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions
5916 and matters set forth and referred to in any of the said exhibits, and further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint. Furthermore, the matter involved in and related to in the said several exhibits is a closed transaction occurring in 1934 and there is nothing in the evidence from which it may be fairly inferred that there is any recent or present continuance of any act or practice related to in any of the said several exhibits, nor is there any evidence from which it may be inferred that there is any likelihood of any future repetition or continuance of any act or practice referred to in any of the said exhibits and they are, therefore, too remote as a basis for any

cease and desist order presently to be issued within the powers of the Federal Trade Commission.

The said exhibits above referred to are as follows, to wit:

937 (d) (e)
933 (7h)
933 (7i)
933 (7j)
925 (8v-(8w)
925 (4t)-(4z)
925 (5a)-(5c)
5917 925 (5s)-(5t)
925 (6a)-(6k)
870 (15h (15i)
562 (14r)
495 (a) (b)
883 (2k)-(2n)
883 (y)
883 (2i)
883 (v)
883 (r)
883 (s) (t)
883 (q)
883 (j) (o)
562 (11j)-(11k)
562 (12c)-(12d)
562 (12h)-(12n)
562 (12x)-(13t)
562 (14h)-(14i)
562 (14v)
562 (15b)-(15d)
562 (9o)
562 (9t)-(9x)
562 (9j)
562 (10c)
562 (10e)
562 (10d)
(Rp. pp. 5311-12)

Objection 3. As to exhibits relating to Clark and Burns questionnaires and the answers thereto, and those characterized by counsel for the Commission "as relating to and reflecting the activities of the Public Relations Committee of the Cement Institute; the Cement Information Bureau of the Cement Institute and certain negotiations of the Cement Institute or its representatives with the Federal Trade Commission and negotiations of the Marketing Research Committee of the Cement Institute with Professors Clark and Burns" (see Transcript of Record, p. 5539) and more specifically to the Commission's exhibits as set forth below under this title, each and every
of these exhibits is objected to as incompetent, ir-
5918 relevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no evidence in the record proving or tending to prove or from which it may be fairly inferred that this Respondent had any part in the selection of any of the committees referred to in the said exhibits or ever had any membership or representation on any of the said

committees or any relationship to the work performed or undertaken by any of the said committees, or that any of the said committees were authorized by, or that they acted under and within the Articles of Association of the Institute and therefore, the actions of the said several committees and the members thereof are not in anywise binding upon this Respondent. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in the said exhibits, and further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint.

The said exhibits above referred to are as follows, to wit:

972-2d and
972-2e (R. p. 5139)
5919 972-1b to 4k, inclusive (R. p. 5320)
973-b to 4n, inclusive
967-a to 18o, inclusive
969-b to 18a, inclusive (R. p. 5324)
970-a to 16n, inclusive
974-b to 15r, inclusive
740-(d)
958 (b) and (c)
829 (t)
836 (2u)
577 (y) and (z)
836 (2x) and (2y)
836 (2v) (R. p. 5326)
836 (2w)
836 (2r)
836 (2p)
836 (2n)
836 (2o)
836 (2q)
836 (2m)
836 (t)
836 (2e)-(2f)
836 (2b)
836 (l)
836 (3v).
5920 836 (3s)-(3u)
836 (3p)-(3r)
553 (2z)-(3e)
553 (2y)
553 (2x)
950 (c)
950 (b)
950 (i) and (j)
950 (r)
950 (p) and (q)

730 (h) and (i)
836 (3m) and (3n)
836 (3o)
576 (2p)
576 (2c)

553 (x)-(2c)
882 (6w)
882 (6x) and (6y)
950 (h)
553 (3g)
571 (a)-(d)
821 (4w)
571 (5e) and (5f)
950 (s)-(u)
440
439 (a) and (b)
862 (6p) and (6q)
553 (3f)

870 (15a) and (15b)
870 (15c) and (15e)
571 ((11L)-(12n)
5921 433
916 (g)-(j)
434
435
436
437
571 (9k)-(11k)
938 (y) and (z)
958 (f) and (g)
938 (2a)

958 (y)
971 (28f) and (28g)
571 (4L)
971 (g) and (h)
958 (2p)
971 (i)
975 (k)
953 (w)
956 (2s) and (2t)
975 (4i)

821 (4x)-(4z)
821 (5a) and (5b)
950 (f) and (g)
950 (n) and (o)

(R. page 5327)
571 (5c) and (5d)
937 (2f)
937 (2e)
937 (2d)
571 (t)-(2b)
937 (2c)
571 (r) and (s)
937 (ww)-(xx)
562 (10q) and (10r)
578 (6r) and (6s)
578 (6t)
553 (w)

(R. page 5328)
553 (2n)
950 (x) and (y)
953 (e)
958 (m) and (n)
958 (j) and (l)
958 (w)
971 (b) and (c)
953 (n)
958 (u)
958 (v)
953 (p)
958 (x)

(R. page 5329)
953 (2r) and (2s)
971 (s)-(2r)
971 (2z)-(3a)
953 (2w)
971 (3b) and (3c)
953 (3i) and (3j)
953 (3g) and (3h)
953 (3r)
958 (2q) and (2r)
941 (s)

971 (j)
571 (2y) and (2z)
956 (3p)

5922 956 (3q) and (3v)
879 (u)
879 (t)
879 (s)
913 (7i)
971 (4c)
971 (4h)
971 (4j)
913 (7b) and (7c)
562 (3r) to (3v)
971 (4o)
971 (4q) and (4r)
971 (4s)-(4u)
966 (h) and (i)
966 (cc)
971 (5w)
971 (5x)
971 (6u) and (6v)
971 (6w)
971 (6x)
971 (6z) and (7a)
971 (7e)
971 (f) and (7g)
971 (7-L)
5923 971 (7m)
971 (9p)
971 (9q) and (9r)
971 (10e)
913 (6h)
971 (29h)
971 (31x)
971 (32b)
971 (10L)-(10n)
971 (10p) and (10q)
971 (10x)-(11d)
971 (30d) and (30e)
971 (30g) and (30h)
971 (12k) and (12m)
971 (30m)
971 (30n)
971 (13c)
571 (3a) and (3b)
971 (j)

(R. page 5330)

971 (4v)-(4x)
913 (6t) and (6u)
971 (5a)
971 (5c)
879 (y)
879 (x)
562 (3q)
879 (w)
817 (6g)-(6i)
971 (5d) and (5e)
879 (v)
971 (5q)
(R. P. 5331)
965 (a) and (b)
962 (c) and (d)
971 (7s) and (7t)
971 (7y)-(8a)
971 (8n)
971 (29t)-(29u)
971 (9a)-(9c)
971 (9h) and 9i)
963 (g)-(q)
971 (9-L)
971 (9m)
971 (9n)
971 (9o)
(R. p. 5332)
971 (29e) and (29f)
971 (29g)
971 (11g)
971 (30i)-(30k)
971 (11L)
971 (11n) and (11o)
963 (r)
971 (11s)-(11u)
971 (11y)
971 (12e) and (12f)
971 (12g) and (12h)
971 (12i) and (12j)
(R. p. 5333)
956 (5r)

971 (30p) and (30q)
971 (13d)
971 (13h)
971 (13j) and (13L)
971 (13r)

5924 963 (z)
963 (2a) and (2b)
958 (3c) and (3e)
971 (14k) and (14L)
971 (31v) and (31w)
971 (17n) and (17o)
971 (17p) and (17q)
971 (17t) and (17u)
971 (32c)
971 (32n)-(32s)
971 (17z) and (18a)
971 (18f)
971 (18i)
971 (18m)
971 (18x)-(18z)
956 (18p)
571 (2L)-(2n)
913 (3q) and (3r)
571 (2o)
958 (4t)-(4u)
913 (3s)
913 (4a)-(e)

958 (4w), (4y) and (
5925 971 (23f) and (23g)
971 (23i) and (23j)
971 (23n) and (23s)
971 (23t)
971 (23u) and (23v)
562 (3w) and (3x)
971 (23w)
971 (25u)-(25y)
971 (26a)-(26f)
971 (26h)-(26L)
971 (25e)

971 (14u)-(14w)
971 (14z)
971 (15a) and (15b)
971 (15e)-(15g)
958 (3i), (3j) and (3k)
971 (31u)
956 (14y) and (14z)
971 (16a)
971 (16b) and (16c)
971 (31a)
956 (15c)-(15e)
562 (b)-(j)
(R. p. 5334)
971 (19d)
971 (19v)
971 (20k)-(20m)
971 (20v)
971 (20z)-(21b)
958 (4a)-(4i)
971 (31q)
913 (4h)-(4K)
971 (22x)
971 (22y)
971 (22z)
971 (23a) and (23b)
958 (4o) and (4p)
(R. p. 5335)
971 (24e)-(24g)
971 (24h) and (24i)
971 (24L) and (24n)
971 (24r)
958 (5c) and (5d)
958 (5a) and (5b)
971 (25L)
971 (25m)-(25o) 971 (25p)
971 (25q)
913 (2w)-(2y)
882 (4v)
(R. p. 5336)
913 (2s) and (2t)
887 (4s) and (4t)
958 (5j) and (5k)
958 (5L)
958 (5m)

971 (32u)
971 (26r)
889 (b)-(e)
958 (5f) and (5g)
958 (5o)
971 (27e)
958 (5p)
971 (27g) and (27h)
971 (27k)-(27n)
971 (28h)-(28k)

5926 971 (28L)-(28n)
419 (a)
964 (h)
971 (28r)
971 (28o)
971 (28t)
913 (w)
913 (v)

958 (5n)
888 (2L)
971 (27a)
971 (27b)-(27c)
(R. p. 5337)
913 (2L)-(2m)
913 (2d)
419 (b)
419 (h) and (i)
971 (28d)
(R. p. 5337)
958 (6h)
971 (28y)
971 (29a)
971 (29b)
913 (d)
971 (29d)
913 (a)
913 (2n)
971 (34p)
971 (33L)-(34o)
(R. p. 5338)

Objection 4. As to the group of exhibits characterized by counsel for the Commission as relating to and reflecting "the activities of the respondents, the Cement Institute, in price filing and other activities during the Code period and subsequent thereto" (R. p. 5340) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them.

Furthermore, the matters involved in and related to in said several exhibits are closed transactions discontinued, as shown by the evidence, on or before the 15th of December, 1935, and there is nothing in the evidence

5927 from which it may be fairly inferred that there is any recent or present continuance of any act or practice related to in any of the said several exhibits, nor is there any evidence from which it may be inferred that there is any likelihood of any future repetition or continuance of any act or practice referred to in any of the said exhibits and they are, therefore, too remote as a

basis for any cease and desist order presently to be issued within the powers of the Federal Trade Commission.

The said exhibits above referred to are as follows, to wit:

797 (w)-(z)	855 (5i)
828 (6t)-(7j)	977 (b)
847 (a)-(c)	947 (11g)
846 (2p)	947 (11f)
846 (2o)	947 (11m) and (11n)
427 (k)	855 (3n)
427 (l)-(t)	947 (11t)
866 (3z)	(947) (13c)

(R. p. 5339)

Objection 5. As to the group of exhibits offered by counsel for the Commission as dealing "with contract checking activities in the Cement Institute and its members" (R. p. 5340) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. Furthermore, the matters involved in and related to in said several exhibits are closed transactions and there is nothing in the evidence from which it may be fairly inferred that there is any recent or present continuance of any act or practice related to in any of the said several exhibits, nor is there any evidence from which it may be inferred that there is any likelihood of any future repetition or continuance of any act or practice referred to in any of the said exhibits and they are, therefore, too remote as a basis for any cease and desist order presently to be issued within the powers of the Federal Trade Commission.

5928

The said exhibits above referred to are as follows, to wit:

799 (7p)
799 (6y)
799 (21)
(R. p. 5340)

Objection 6. As to the group of exhibits offered by counsel for the Commission as relating "among other things to the activities of the Cement Institute and its representative members, to the work of the Trade Practice Committee and the Cement Institute" (R. p. 5341) and more specifically to the Commission's exhibits

5929

as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no evidence in the record proving or tending to prove or from which it may be fairly inferred that this Respondent had any part in the selection of the committees referred to in the said exhibits or ever had any membership or representation on any of the said committees or any relationship to the work performed or undertaken by any of the said committees, or that any of the said committees were authorized by, or that they acted under and within the Articles of Association of the Institute and therefore, the actions of the said several committees and the members thereof are not in anywise binding upon this Respondent. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in the said exhibits, and
5930 further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint. Furthermore, the matters involved in and related to in the said several exhibits are closed transactions; the so-called Trade Practice Committee as the evidence shows was discontinued in January, 1936, and there is nothing in the evidence from which it may be fairly inferred that there is any recent or present continuance of any act or practice related to in any of the said several exhibits, nor is there any evidence from which it may be inferred that there is any likelihood of any future repetition or continuance of any act or practice referred to in any of the said exhibits and they are, therefore, too remote as a basis for any cease or desist order presently to be issued within the powers of the Federal Trade Commission.

The said exhibits above referred to are as follows, to wit:

425 (d)
425 (e)
947 (10L)
947 (10m)
947 (10k)
947 (10j)
5931 948 (d)
879 (ddd)
879 (bb)
948 (f)
948 (g)
948 (h)
948 (j)
948 (i)
879 (ww) and (xx)

(R. page 5340 and page 5341)

Objection 7. As to the group of exhibits offered by counsel for the Commission as dealing "with price lists which have been published by the Respondents, showing special, arbitrary prices at ports and certain correspondence dealing with basing point prices" (R. p. 5343) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in the said exhibits, and further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint.

The said exhibits above referred to are as follows, to-wit:

417 (b)
417 (a)
5932 417 (d)
417 (g)
417 (f)
417 (h) and (i)
417 (j) and (k)
417 (u)
417 (t)
417 (w) and (x)
874 (hh)
874 (m)
874 (L)
874 (o)
874 (n)
874 (s) and (t)
874 (q)
874 (p)
813 (x) and (y)
947 (9L)-(9o)
417 (jj)
417 (ii)
947 (15 e)
418 (a)-(d)
870 (13n)-(13r)
5933 867 (u) to (y)

417 (L)
417 (m)
417 (o)
417 (n)
417 (p) and (q)
417 (r) and (s)
417 (v)
(R. p. 5341)
417 (y)
417 (z)
417 (aa)-(dd)
417 (ff)
417 (ee)
417 (gg)
417 (hh)
571 (4 w)
947 (14 f)
947 (14 g)
947 (14 e)
947 (14 y)
(R. p. 5342)
551 (j)-(3n)
870 (13b)-(13d)
418 (e) and (f)
418 (g)
922 (b) to (ggg)
(R. p. 5343)

Objection 8. As to the exhibit offered by counsel for the Commission as relating "to information which was secured by Mr. Affleck from Mr. Charles L. Hogan, for use in connection with pending legislation" (R. 5343) and more specifically to the Commission's exhibit as set forth below under this title, same is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibit, nor has any witness been called properly to identify it. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transaction referred to in the said exhibit, nor does it refer to any transaction or act authorized by or taken under or within the articles of association of the respondent institute, and it is in no wise binding upon this respondent.

The said exhibit above referred to is as follows, to wit: 879 (ppp) (R. p. 5343)..

Objection 9. As to the group of exhibits offered by counsel for the Commission as relating "primarily to consideration given by respondents to state-owned cement plants" (R. p. 5344) and more specifically to the Com-
5934 mission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in the said exhibits, and further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint. Furthermore, the matters involved in and related to in the said several exhibits are closed transactions and there is nothing in the evidence from which it may be fairly inferred that there is any recent or present continuance of any act or practice related to in any of the said several exhibits, nor is there any evidence from which it may be inferred that there is any likelihood of any future repetition or continuance of any act or practice referred to in any of the said exhibits and they are, therefore, too remote as a basis for any cease and desist order presently to be issued within the powers of the Federal Trade Commission.

The said exhibits above referred to are as follows,
5935 to wit:

731 (12u)
731 (12t)
731 (12s)

(R. p. 5344)

Objection 10. As to the group of exhibits offered by counsel for the Commission relating "to the activities and consideration by the Respondent to importations of foreign cement" (r. pp. 5345-46) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this Respondent was or is in anywise involved in or a party to the transactions and matters set forth and referred to in the said exhibits.

The said exhibits above referred to are as follows, to wit:

812 (i)
812 (h)
867 (5i)
818 (m)
885 (2a)
844 (k)
5936 844 (l)
844 (m)
844 (n)
576 (4q)
576 (4p)
576 (s)
576 (t)
576 (r)
576 (p)
576 (q)
576 (5h)
576 (w)
576 (v)
534 (j)
534 (i)
534 (h)
534 (f)
534 (b)
534 (e)
583 (b)
868 (7k)
586 (4z)
586 (4L)
586 (4m)
586 (4n)
644 (k)
644 (h)
924 (6a)
551 (a)

(R. p. 5346)

(R. 5345)

Objection 11. As to the exhibits offered by counsel for the Commission relating to "Freight Rate Bureau activi-

ties of the Cement Institute and its members" (R. p. 5347) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evi-
dence that this Respondent was in anywise involved
5937 in or a party to the transactions and matters set
forth and referred to in any of the said exhibits, and further, in that they do not relate to any unfair method of competition or other issue under the complaint, nor do they tend to prove any issue under the complaint. As an additional objection on behalf of this Respondent, the evidence does not show that this Respondent has ever made any use of the Freight Rate Service of the Institute in any manner whatsoever.

The said exhibits above referred to are as follows, to wit:

424 (d)
424 (c)
424 (b)
424 (a)
424 (i)
424 (h)
424 (g)
424 (e)
424 (f)
549 (2b)
549 (y)
549 (2a)
896 (a) and (b)
923 (7r)
545 (4n)
545 (4m)
545 (4l)
747 (d)
747 (e)

(R. p. 5347)

5938 Objection 12. As to the group of exhibits offered by counsel for the Commission relating "primarily to land grant rates, that is to a consideration of the activities of the Cement Institute and its members relative to land grant rate information and sales of cement to the United States Government which involve the use of land grant rates." (R. 5349) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. As a further objection to each and every of the said exhibits,

there is no showing in the evidence that this Respondent was in anywise involved in or a party to any of the transactions or matters set forth or referred to in any of the said exhibits.

The said exhibits above referred to are as follows, to wit:

835 (aa) to (cc)
835 (z)
734 (h)
822 (c)
947 (h) and (i)
5939 947 (d)-(g)
947 (c)
947 (b)
947 (o)
585 (cc)
585 (dd)
585 (ee)
831 (L)
831 (j)
831 (h) and (i)
947 (10c)
947 (10e)
820 (h)
919 (2L)
919 (2k)
919 (2j)
919 (2i)
919 (3c)
919 (3b)
885 (2q) and (2r)
(R. p. 5347)
548 (3b)
919 (n)
919 (m)
947 (9i)-(9k)
947 (s)
947 (r)
919 (L)
919 (k)
947 (9v)
(R. p. 5347)
855 (2z)
947 (13b)
947 (13a)
948 (2a) and (2b)
837 (a)-(L)
919 (3e) and (3f)
562 (7L)
562 (7k)
885 (6s)
587
885 (8e)
(R. p. 5348)
(R. p. 5349)

Objection 13. As to the group of exhibits offered by counsel for the Commission as dealing "with the ac-
5940 tivities as relating to and reflecting the activities of the respondent Institute and its members concerning the use of land grant rates and the quotation of Government destination costs with respect to sales to the United States Government, also with respect to their activities dealing with efforts to restrict diversion of shipments of cement from the point of original consignment; also with the activities relative to the trucking of Portland cement; discussion with respect to quotations f. o. b. mills and the adoption of uniform sales contracts and uniform bids" (R.

p. 5352) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in any of the said exhibits. Said exhibits are further objected to in that they refer to activities outside of the scope of the Articles of Association of the Institute and they are, therefore, not binding
5941 upon this Respondent, and for the further reason that the evidence clearly shows that this Respondent has consistently over a period of many years continuously sold the United States Government at f. o. b. mill prices or at such prices as gave the Government the benefit of land grant rates and in the manner specified and required by the United States Government.

The Said Exhibits above referred to are as follows, to wit:

427 (g)
751 (i)
751 (j)
751 (k)
751 (b) and (c)
751 (d) and (e)
749 (2v)
584 (g)
546 (l)
546 (k)
750 (g)
750 (a)
576 (5t)
576 (5s)
422 (o)
5942 422 (m) and (n)
422 (L)
422 (i), (j) and (k)
422 (g) and (h)
545 (6q)
422 (b)-(f)
585 (gg) and (hh)
585 (ff)
584 (i)
749 (n)
749 (a)
550 (xx)
546 (q)
546 (p)
546 (o)
546 (m) and (n)
(R. p. 5349)
546 (2i) and (2j)
933 (3c) and (3d)
933 (2s)
719 (a)
933 (m)
933 (L)
845 (n)
562 (6w)-(6y)
640 (K) and (L)
640 (a)-(j)
817 (k)
422 (a)
(R. p. 5350)
954 (i) and (j)

839 (4k)
817 (g) and (h)
817 (i) and (J)
585 (kk)
562 (15w)-(15x)
735 (b)
735 (a)
954 (k)-(m)
553 (6v)
935 (b)
585 (a)
806 (3e) and (3f)
800 (2u)-(2x)
(R. p. 5351)

5943 Objection 14. As to the group of exhibits offered by counsel for the Commission relating to "and reflecting the activities and the consideration of the respondent Institute and its members with respect to plans and activities on the part of private concerns in building Cement manufacturing plants" (R. p. 5353) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called properly to identify them. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in any of the said exhibits. Said exhibits are further objected to in that they refer to activities outside the scope of the Articles of Association of the Institute and they are, therefore, not binding upon this Respondent.

The said exhibits above referred to are as follows, to wit:

924 (5r)
415 (4i)
573 (l)
812 (s)
415 (27)
415 (28)
415 (22)
574 (m) and (n)
553 (2m)
5944 553 (2L)
500 (h)
(R. p. 5352)
500 (g)
942 (b)
942 (c)
571 (4g)
674
575 (i)

547 (4k)
954 (2h)
553 (5z) and (6a)
500 (b) and (c)
571 (4h)
575 (g) and (h)
575 (a) and (b)
562 (16g)
562 (16f)
562 (16j)
(R. p. 5353)

Objection 15. As to the group of exhibits offered by Counsel for the Commission dealing "with and reflecting the activities and considerations by the Cement Institute and its members to restriction of sales and restraints upon the sales of Portland Cement through dealer channels and at dealer prices" (R. p. 5363) and more specifically to the Commission's exhibits as set forth below under this title, each and every of these exhibits is objected to as incompetent, irrelevant and immaterial in that no proper foundation has been laid for the admission of such exhibits, nor has any witness been called to properly identify them. There is no showing in the evidence that this Respondent was in anywise involved in or a party to the transactions and matters set forth and referred to in any of the said exhibits. Said exhibits are further objected to in that they refer to activities outside the scope of the Articles of Association of the Institute and they are, therefore, not binding upon this Respondent, and for the 5945 further reason that the evidence clearly shows that this Respondent has consistently over a period of many years continuously sold the United States Government at f.o.b. mill prices or at such prices as gave the Government the benefit of land grant rates and in the manner specified and required by the United States Government.

The said exhibits above referred to are as follows, to wit:

549 (2e)
549 (d)
549 (e)
(R. p. 5353)
549 (w)
549 (u)
549 (v)
549 (r)
549 (t)7
549 (s)
576 (6u)
576 (6v)
576 (6t)
576 (6q)-(6s)
549 (n)
549 (o)

549 (q)
823 (a)
549 (p)
734 (jj)
734 (kk)
734 (ii)

585 (q)-(s)
834 (e)
549 (2h)
549 (g)
549 (j)
490
813 (b)
549 (i)
813 (a)
549 (c)

549 (2d)
5946 547 (k)

549 (2i)
914 (d)
914 (g)
914 (f)
954 (u)
427 (bb) and (cc)
947 (16L)-(16p)
562 (15h)
562 (15i)
562 (15y)
914 (e)

549 (3b)
549 (3c)
549 (3a)
549 (2L)
549 (2m)
549 (3p)

549 (m)
877 (h)
877 (g)
549 (L)
549 (K)
585 (u)
585 (t)
(R. p. 5354)

547 (L)
547 (i)
547 (j)
547 (h)
549 (h)
549 (g)
549 (f)
549 (2c)
813 (c)
879 (a)
879 (b)
547 (b)
547 (a)
(R. p. 5353)

645 (e) and (f)
645 (g)-(m)
645 (d)
645 (c)
645 (b)
645 (a)
914 (e)
813 (m)
813 (L)
549 (3g)
813 (n)
731 (6g)
549 (2f)
549 (3e)
(R. p. 5356)

574 (f)
547 (2r)
547 (2q)
867 (p)
867 (o)
813 (r)

826 (bbb)
581 (f)
736 (a) and (b)
736 (c)
919 (d) and (e) and (b)
919 (c)
420 (ppp)
547 (g)

731 (6e)
1027 (u)
1027 (t)
731 (6d)
1027 (v)
809 (11s)
809 (11r)
421
549 (4n)
731 (6b and (6c)
5947 737 (ww)
737 (aa)
737 (bb)
737 (cc)

549 (4i)
809 (11u)
809 (11t)
549 (4k)
549 (4L)
886 (d)
819 (aa)
819 (x)
873 (i)
731 (2L) and (2m)
832 (g)
832 (h)
420 (4i)

549 (3z)
549 (4z)
549 (4b)
549 (4c)

813 (q)
867 (7e)
867 (7d)
867 (7x)
731 (6f)

(R. p. 5357)

819 (bb)
933 (x)
643 (b) and (c)
870 (2b)
873 (c) and (d)
873 (e) and (f)
873 (g)
473
731 (4f)
873 (m)
549 (4m)
813 (w) and 813 (v)

(R. p. 5358)

584 (m)
813 (z)
832 (f)
832 (e)
879 (kk)
832 (d)
832 (c)
872 (b)
813 (bb)
415 (373)
867 (7w)
867 (7v)

(R. p. 5359)

549 (4t)
947 (10b)
947 (10a)
919 (2w)-(2z)

549 (4d)
549 (4e)
549 (4f)
549 (4g)
822 (2a)
816 (d)
813 (ff)
813 (ee)
914 (k)
416 (rr)

947 (10h)
947 (10z)
947 (10y)
919 (2t)
546 (2L)
546 (2k)
562 (7u)
562 (7s) and (7t)
458 (a)-(c)
458 (d) and (e)
933 (7p) and (7q)
914 (n) and (o)
914 (m)
5948

877 (n)
877 (m)
877 (i) and (j)
886 (e)
731 (4v)
731 (4u)
415 (374)
736 (d)
734 (hh)
832 (b)
874 (oo)

549 (6b)
415 (366)

549 (4u)
546 (2o) and (2p)
914 (j)
415 (49)
914 (z)
415 (50)
914 (h)
947 (10f)

(R. p. 5360

415 (39)
415 (40)
549 (5c)
549 (4y)
549 (4z)
646 (b)
867 (7c)
867 (7b)
867 (6y)
867 (7n)
867 (7i)
867 (6z) and (7a)
933 (5e)
933 (5d)
R. p. 5361)

547 (2d)
547 (2e)
547 (2m)-(2o)
547 (2i)
547 (z)
547 (y)
547 (x)
547 (2b)
547 (2a)
867 (7t) and (7u)
867 (7s)
547 (v)
547 (u)
547 (t)
(R. p. 5362)

547 (q)
547 (p)

415 (367)	547 (o)
415 (368)	549 (5x)
415 (545)	547 (n)
886 (s) and (t)	547 (m)

(R. p. 5363)

Respectfully Submitted,

MARQUETTE CEMENT MANUFACTURING COMPANY,
By: EDWARD A. ZIMMERMAN,
H. W. NORMAN,
Its Attorneys.

5953 (COM. EX. 1098 was offered and received in evidence.)

5975 (COM. EX. 1100-A and B was offered and received in evidence.)

5976 (COM. EX. 1101-A and B was offered and received in evidence.)

5979 (COM. EX. 1102-A and B, were offered and received in evidence.)

5987 Mr. Zimmerman: Could I ask Mr. Wooden has that sack charge of 15 cents existed for many years?

Mr. Wooden: I think it has. I do not know how many, but it has existed for a number of years.

Mr. Zimmerman: I guess there always was a sack charge in the industry?

Mr. Wooden: The 40-cent cloth sack charge goes back many years. Of course, paper is a more modern method of packing. Whether it has always been 15 cents, the differential, I would not want to definitely say.

6010 Examiner Norwood: The objection is overruled and the following exhibits are received subject to check: 1099-A to AA.

6016 New York, N. Y.,
May 10th, 1938.

6017 Mr. Wooden: Your Honor, when Mr. Parsons was on the stand on April 5, he was requested to supply a list of base points and base point prices since October, 1936, and a list of the Volunteer Company's prices f. o. b. Knoxville, including a statement of what base price and what freight rate was included in the latter.

I have here a letter from the attorney for the Volunteer Company, Charles H. Smith, transmitting information supplied in answer to the request made on Mr. Parsons. Mr. Parsons, however, has been ill and was not able to supply the data personally.

I have had the material marked Exhibit 1111-A to G, inclusive, for identification. It consists of a letter addressed to your Honor and two memoranda addressed, both on the letterhead of the Volunteer Company to your Honor.

I offer them for the record at this time.

6018 Examiner Norwood: If they may be admitted by agreement, we can omit the letters to the Examiner and save that much record.

Mr. Wooden: They are all addressed to you, I believe. There are three separate papers. One of them, a letter signed by the attorney for the company and identifying the other material. Since the other material is not signed but appears on the letterhead of the Volunteer Company and transmitted by the attorney, I thought it well to offer the attorney's letter as part of the identification.

Examiner Norwood: Very well.

Mr. Leisure: We have no objection, your Honor.

(COM. EX. 1111-A to G inclusive was offered and received in evidence.)

6019 JOHN F. NEYLAN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am general salesmanager of the Lone Star Cement Corporation and have held that position since the early part of 1937, I believe. Prior to that time I was vice president of the Lone Star Cement Corporation, which I believe was

a subsidiary company of the International, for about a year and a half. Prior to that time I was connected with the Lone Star Company or companies as assistant general salesmanager for about 10 years.

Q. Is the Lone Star Cement Company at the present time a successor to the International Cement Corporation?

A. Yes.

Q. Is the situation that formerly the International held the stocks of a number of separate Lone Star cor-
6020 porations, and now there is only one Lone Star Corporation, or is there a separate corporation for each?

A. No, there is only one corporation.

Q. And the International is not any longer in the picture?

A. No.

Q. How many cement mills does the Lone Star Corporation have?

A. Ten.

Q. Will you state their locations?

A. One in Hudson, New York, one at Nazareth, Pennsylvania, one at Norfolk, Virginia, one at North Birmingham, Alabama, one at New Orleans, La., one at Manchester, Texas, which is outside of Houston, one at Harries, Texas, which is close to Dallas, one at Spanarie, Ala., one at Limedale, Indiana, and one at Bonner Springs, Kansas.

Q. What is the average total capacity of your ten mills?

A. I would say close to 17,000,000 barrels.

Q. What is the average total production or output over the last several years?

A. I would say somewhere between thirty or forty per cent.

Q. To what extent do you as a general sales manager decide and carry out the policy of the Lone Star Company, with regard to the price of cement?

A. I do not set the policy of the company.

6020-a Q. Who does?

A. The policy is set by the president and the vice presidents usually, in conference. However, my opinion is
6021 very often asked.

Q. Has that been the situation ever since you have been connected with the company?

A. Pretty much, yes.

Q. Are all of your 10 mills basing point mills?

A. They are. Let me inject, however, that one mill at the present time is not operating.

Q. Which one is that?

A. Spanarie, Alabama.

Q. It was, when it operated?

A. Yes.

Q. Is your Nazareth mill a basing point by reason of it being in the Lehigh Valley district?

A. We consider it a basing point at Nazareth.

Q. But it is in the Lehigh Valley district?

A. Yes, it is in the Lehigh Valley district.

Q. And how many other mills are there in the Lehigh Valley district?

A. From 22 to 26.

Q. What is the extent of territory covered by that Lehigh Valley district, in miles?

A. Do you mean our mill?

Q. No, in the district itself.

A. Well, all I can tell you now is the extent to which we find other mills in our territory, because our mills necessarily do not cover as much territory as some of the

6022 other mills.

Q. I am not referring to sales territory. I am referring to the producing territory known as the Lehigh Valley district.

A. Do you mean in area in which those mills are located?

Q. Yes.

A. I really do not know, in mileage.

Q. Just an approximation is all I expect, of course.

A. Probably 25 miles.

Q. Twenty-five miles each way?

A. I would say so.

6023 Q. There is a so-called Lehigh Valley district, is there?

A. We refer to the Lehigh Valley district.

Q. Do you have a base price at your mill at Nazareth?

A. We have.

Q. Are not all the other producing points in the Lehigh Valley also basing points in the same sense?

A. Only to the extent that the rates generally from Nazareth are the same as the rates that apply generally from Lehigh Valley.

Q. And in what territory is that true, that the rates are the same?

Mr. Leisure: The witness has just said in the Lehigh Valley the rates are the same.

The Witness: Well, I would say that when you get out comparatively few miles from the various mills the rates equalize.

6024 Q. Within that district, before the rates begin to equalize, then, I take it that the rates from any mill for delivery within that small area vary according to the distance from the mill?

A. I do not know that it is based on distance. Your rates would probably run from a switching charge to, I believe, the first is 5½ cents now.

6025 Q. There is a variation?

A. I believe that is true.

Q. Does your mill at Nazareth sell and ship to various points within the Lehigh Valley District?

A. Yes, we do.

Q. Other mills in that district, do you find them shipping and selling to various points within that district?

A. Yes.

Q. Is the base price at your Nazareth mill ordinarily the same as the base price of other mills in the Lehigh Valley District?

A. Ordinarily, yes.

6026 Q. Then do I understand that some different mills at different times, initiate whatever changes are made?

A. Any change they want to make.

Q. And, in fact, do different mills in the Lehigh Valley District at different times initiate changes?

A. They have initiated changes in the past.

Q. What changes in the Lehigh Valley base have taken place in the last two years?

A. I do not recall of any.

Q. Three years; would the answer be the same?

A. About three years; the answer would probably be the same for three years.

6027 Q. And what is the Lehigh Valley base price now?

The Witness: May I have the question now, please?

(The question is repeated by the reporter).

The Witness: The price at our mill at Nazareth is $2.05 in cloth.

Examiner Norwood: Are the other mills the same?
6028 In the Lehigh Valley?

The Witness: As far as I know, yes.

By Mr. Wooden:

Q. When you say $2.05 in cloth, what is the differential that you would make for paper and bulk?

A. 25 cents less for paper, and in bulk it would be 45 cents less.

Q. In other words, that is a 15 cent charge for the paper, is that right?

A. That is right, a fifteen cent charge for the paper.

Q. How long have those differentials been in effect?

A. Oh, I would say seven or eight years.

Q. Did they differ from the ones that you have named prior to seven or eight years ago?

A. At one time I think there was a fifty cent differential for bulk, and prior to that time I think it was forty-five. There was a period, I believe, when it was a fifty cent differential for bulk.

Q. And it is now forty-five?

A. Forty-five.

Q. Are those differentials for containers and packages, the method of packing and the form of packing—do you find them the same for the other companies?

A. We do.

Q. Have there been any times when you did not
6029 find them the same?

A. I would say there have.

6030 Q. How did you know, Mr. Neylan, whether there had been departures from those going differentials?

A. Because we have made them.

6031 Q. You don't know whether others have or have not?

A. I don't know.

Q. Under what conditions have you made them?

A. Well, at the time the price of sacks advanced, we advanced our price on sacks to fifteen cents instead of ten cents per sack.

6032 Q. Did others do it at the same time?

A. They did not, and we had to recede.

Q. Did they catch up with you a little later on?

A. No, sir.

Q. Is your sack allowance any different now from others?

A. No, it is not.
Q. When was that time that you refer to?
A. Oh, about 1923 or 1924, or somewhere in there. It might be 1925.
Q. Was that in the spring of 1933, do you think?
A. No, no; 1925.
Q. Oh, away back there? 1923, or 1934 or 1925?
A. Yes.
Q. Was that situation confined to some particular territory that you operated in?
A. My recollection is that we made the change in a number of territories.
Q. And others did not follow along?
A. They did not.
Q. And then you had to go back to what it was before, is that right?
A. That is right.
Q. In the Lehigh Valley district is the delivered price at various destinations in that district, is it ordinarily the same, from the various mills?
6033 A. Do you mean within the area itself?
Q. Yes.
A. I would say yes.
Q. If the freight rates within that area from each mill varied?
A. Well, the only way I can account for it is our own charge. We make a charge at certain areas contiguous to our mill on the basis of the price that we think we are entitled to.
Q. And your price within the district, is that the delivered price as well as outside?
A. That is true.
Q. That is true of the other mills, as well?
A. I assume so. At least, we find prices that we have to either meet or forego the business.
6034 Q. Do other mills in the Lehigh Valley district sell in Nazareth?
A. Yes, some. There are, however, a number of mills grouped right around Nazareth.
6035 Q. Well, that is the fact, is it not, that the delivered price in Nazareth is the same for the various mills in the district?
A. Probably true. In other words, if we are selling cement at a certain price, I don't believe anybody can get any higher for it.

Q. But I understand your base price at Nazareth is the same as the other mills in the Lehigh Valley district?

A. That is true.

Q. And yet they have to pay freight to Nazareth, some of them, more than you do?

A. They probably do.

Q. And yet your delivered price is the same at Nazareth.

6036 The Witness: Well, we are one of the closest mills to Nazareth.

By Mr. Wooden:

Q. Yes.

A. Now, if we make a price at Nazareth based on a certain figure that is given us as the price we want to get, that we think is a reasonable price, regardless of how it is made the other mills have either got to meet that price if they want the business, or stay out.

6037 Q. Do you know whether or not within the Lehigh Valley District your company takes its base price and adds the freight to each separate distance in order to obtain the delivered price, or not?

A. No, we do not.

Q. How do you determine the delivered price within the Lehigh Valley District?

A. That price is arrived at within our own organization, and in the points contiguous to our mill or close to our mill we put that price in.

Q. Yes. But how do you arrive at it if you do not add the freight to each point to your base price?

A. Generally speaking, I think that the prices that we make are based on the minimum freight, that is, the first freight.

Examiner Norwood: In other words, you figure on meeting the price of your nearest competitor, the competitor nearest to the point of delivery?

The Witness: Yes, we try to.

6038 Examiner Norwood: Suppose you have to quote it first, what do you do?

The Witness: We will put a price in of what we think is a proper price for ourselves, and depending upon whether or not we get any business, we can tell whether that price is the right price or not.

Examiner Norwood: How do you base that price?

The Witness: Usually on our minimum road haul freight.

By Mr. Wooden:

Q. There is a difference, as I understand it, within the Lehigh Valley District, between the cost of transportation to different points of destination in that district?

A. That is true.

Q. And you say you usually base your destination price on minimum freight?

A. Minimum road haul freight.

6040 Q. Does that minimum road haul freight apply throughout the Lehigh Valley district?

A. Pretty much.

6041 Q. What method do you use in figuring arbitrary prices, so-called arbitrary prices, in New England territory?

Mr. Leisure: Should not we first have such testimony that he has arbitrary prices?

Examiner Norwood: I think he can state that in answer to that question.

Mr. Wooden: There are arbitrary prices in that territory, as has been shown.

Mr. Leisure: None shown by this witness or his company.

Examiner Norwood: I think he can state it.

The Witness: May I have the question again?

Examiner Norwood: Read the question.

(The question is read by the reporter.)

The Witness: I do not believe that our company has any arbitrary prices of our own making in New England at the present time.

By Mr. Wooden:

6042 Q. Of your own making? Do you mean then that you merely meet the arbitrary prices that you find by others?

A. Yes.

Q. Do you know how those arbitrary prices are made from the Lehigh Valley district?

A. I do not.

Q. Are some of the companies in the Lehigh Valley district making such arbitrary prices?

A. We have found,—we find those prices throughout New England.

Q. Made by some Lehigh Valley mills?

A. I do not know whether they are all made by the Lehigh Valley mills or not.

Q. Some of them?

A. Some of them, yes.

Q. Can you name any Lehigh Valley mills that do have arbitrary prices in effect in the New England territory?

A. I do not know who put the last prices into effect.

Q. Can you name any mills at any time that have put arbitrary prices in effect in New England points?

A. Yes, I believe Lehigh did.

Q. Any one else?

A. Back in 1926, we did.

Q. Any more recent periods when you put one in?

A. No, I do not recall.

6043 Q. Have there been arbitrary prices in effect at New England points ever since the time you put some in yourself?

A. Yes, I think so; not at all times; there have been at different times.

Q. How long have arbitraries been in effect there? Without a break?

A. My recollection is that it was—I really do not know.

Q. Does it go back as far as 1933, say?

A. Well, there were arbitrary prices in effect prior to that time. There have been arbitrary prices in effect off and on since 1926. That is my recollection.

Q. And continually since when, about?

A. I do not know. There have been some arbitrary prices in for, it seems to me, pretty near continuously. The area changes.

Q. I understand that. Continuously since 1926; that is what I am trying to get at—since when?

A. I think there was a period in there at one time when there were no arbitrary prices in. Just when, I don't know; whatever I would say would be a guess.

6044 Q. What is the approximate extent of the sales territory covered by your respective mills?

A. The Hudson Mill covers New England, all of New York State. Our Pennsylvania mill covers the State of New Jersey and a portion of Pennsylvania, Delaware, a portion of Maryland. Our Virginia mill covers the State of Virginia, Washington, D. C., the greater portion of

North Carolina. Birmingham covers a portion of Tennessee, Alabama, Mississippi, South Carolina, with the exception of a little piece in the northeast, which does not amount to very much, which goes to Norfolk; the western portion of North Carolina, Georgia, a portion of Florida, and a small—they do not cover all of Mississippi—a portion of the southern part of Mississippi is covered by Louisiana. Birmingham also covers a small part of Arkansas, and goes off to a certain extent in Kentucky. Louisiana covers the State of Louisiana and a very small portion of Mississippi. Indiana covers a portion of Ohio, all of Indiana, the greater portion of Illinois, and we make occasional trips into Wisconsin, principally in Milwaukee, a little bit of Michigan at times. We have never been very consistent. Part of Kentucky, and the City of St.
6045 Louis. Kansas covers Kansas, Southern Iowa, about ten counties in South Iowa, Nebraska, a portion of Arkansas, about one half—a little more than half of the State of Oklahoma, the western part of Missouri. Texas covers the State of Texas, a portion of New Mexico, the southern portion of Oklahoma and a small portion of the southwestern part of Arkansas.

Q. Is that all?

A. I think that is all.

Q. What are the principal factors that determine the territory that each of your mills sells at?

A. Well, where we can get available business without its costing us too much money to get it.

Q. You mean costing too much in the way of sales or do you have in mind also where the cost of transportation is too heavy?

A. Both are factors.

Q. Do you find in the territory where you do business that a number of mills are non-basing point mills?

A. Yes.

Q. Will you name the non-basing point mills in the territory where your mills operate?

A. That is a large order.

Q. Will you name some of them? I do not expect you to be exhaustive or absolutely complete on it; but name some of those that come to your mind in each territory.

6046 A. Of course, I have to make this reservation, that a mill called a non-basing mill would be called

a non-basing mill because we cannot find quotations that we can check back to that particular mill.

Q. All right.

A. I cannot say definitely that this mill is non-basing mill, because they may have a base on it.

Q. There is rather wide knowledge, isn't there, in the industry, of what mills are base mills and what mills are not base mills?

A. Pretty much, yes, but it is not one hundred per cent true.

Q. But you can approximate the identity of non-base mills, so to speak?

A. Yes.

Q. Go ahead.

A. I would say Portland Point; Glens Falls,—

Q. New York?

A. That is New York. Rockland, Maine, or Thomaston, Maine, whichever is the proper location. Syracuse; that is, the Jamesville Mill; Martinsburg, West Virginia; Manheim.

6047 Q. In each case, would you mind giving the name of the company that operates the mill?

A. Well, I think the Rockland mill is the Lawrence Cement Company's mill. Jamesville mill, I believe is the Alpha; Portland Point is Penn Dixie; Martinsburg is the Standard Lime & Cement, I think they call it. Manheim, I believe, is Alpha; Southern State, Rock Mount, Georgia; Coosa plant which is at Ragland, Alabam.

Q. What company?

A. Coosa. National Portland, their name is the National Portland Cement Company. There is the Osborne, Ohio mill, I think the Southwestern has a place there. That is not a basing point mill, I don't think.

Q. Is there another plant at Osborne?

A. I think there are two there.

Q. What is the other?

A. I think the Wabash and the Southwestern.

Q. Neither of these are basing mills?

A. Not that I know of. There is the Stroh, Indiana, plant. That is Wabash. The Painesville, Ohio, I don't believe that is a base.

Q. What plant?

A. Standard. Then the Medusa at Wampum.

Q. Is that in Ohio?

A. Pennsylvania. That is a cross section of them.

6048 Q. Is there one at Fultonham?

A. Ohio, yes.

Q. What company?

A. I think that is the Pittsburgh Plate Glass.

Q. How about down in Tennessee and Kentucky territory and southern Indiana; are there some non-basing point mills there?

A. Southern Indiana?

Q. Yes.

A. I don't know of any.

Q. Kentucky?

A. No.

Q. Tennessee?

A. The Cumberland plant at Cowan, Tennessee, and Hermitage, I believe, in Nashville, near Nashville.

Q. How about the Volunteer?

A. Oh, the Volunteer, at Nashville, Tennessee.

Q. How about out in the Kansas territory?

A. I don't know of any.

Q. As I understand it, all of your mills have always been in your experience basing point mills?

A. That is right.

Q. What are the factors that have determined your company in deciding to have its mills basing point mills?

A. I don't know.

6049 Q. Have you ever been in on any discussions or conferences with your superiors concerning such matters?

A. No, I have not.

Q. That is true even of the time you were vice president?

A. That is true during that period.

Q. Who would know in your organization what the considerations were that led to making all of your mills basing points?

A. Well, the president would probably know to a certain extent, but there were bases on our mills, prices put on our mills, and we considered them as basing points before I came with the company, and I believe pretty near before anybody that is now with the company came with it.

6050 Q. You have been with it how long, about ten years?

A. About fifteen years.

Q. Based on your experience as a sales manager, what would you say are the advantages of having mills basing point mills?

A. I don't know that there is any advantage.

Q. Are there any advantages in having them non-basing point mills?

A. I would not know that. We have not got any.

Q. I know. You are a man of long experience in the industry and you operate in competition with non-base mills, I assume, and you do not see any advantages either way?

6051 The Witness: I really do not.

By Mr. Wooden:

Q. You would just as soon have your mills non-base mills as base mills?

A. No, I would not. As a matter of pride I would 6052 want that.

Q. Anything other than pride?

A. No. I don't see any advantage one way or the other.

Q. What is the basis for pride in having your mills basing point mills?

A. Just to be out in front. The natural pride that you take in your organization.

Q. What do you mean by being out in front? Are the basing point mills out in front?

A. No, I mean by that the natural pride that you have in your own organization of making the prices public, your prices, and not being ashamed to publish them.

6053 Q. Mr. Nyland, is there a certain territory tributary to each of your mills which are basing points within which your base price is the going price in that territory?

A. Yes, probably the lowest price.

Q. And is that price the price which forms the basis of the delivered prices in that territory?

A. Well, that is the price we ask for it. I won't know that I understand your question.

Q. Well, as I understand it, there is the territory tributary to each of your basing point mills in which the going delivered price in that territory at each destination is the sum of your base price plus freight?

A. That is true.

Q. And mills coming into that territory from outside, they ordinarily make the same destination price within that territory that you make by adding freight to your base price?

A. Well, they meet our prices in that territory.

Q. In other words, they meet but do not go below your prices?

A. Generally speaking. There are cases, however, where that is not true.

Q. Then, as I understand it, you sometimes sell in the direction of or in territory that is tributary to some other company's base point?

6054 A. Yes, to a certain extent.

Q. When you go into that territory, they meet the destination prices in that territory that are arrived at by adding the freight to the other base company's mill?

A. Yes, we meet the prices that are quoted by the other company.

6055 Q. Now, in those various territories, as I understand it, you are unable to get your base price as a net mill net.

A. Yes.

Q. And in territories where other base mills are operating on their base, you do not get the same mill net when you go into that territory, is that correct?

A. That is correct.

Q. Do you ever get more than your mill base price?

A. In some instances, yes.

Q. In what instances?

A. Well, in a very small portion of your business, real right close to your mill, where your switching charge

6056 is really less than your item that you include for the freight.

Q. In the event that you quoted delivery by rail and actually made delivery by water or truck, would you then have a larger realization than your mill base?

The Witness: I do not recall any, your Honor.

By Mr. Wooden:

Q. You have made no deliveries by truck or water?

Mr. Leisure: That is not the question at all.

Examiner Norwood: Let him answer that.

The Witness: We have made some deliveries by water.

We have not made any deliveries by truck in quite
6057 a number of years.

By Mr. Wooden:

Q. How many years—five or six years?

A. Well, it depends on what section you are talking about. There are some sections that we never trucked. There are some sections where we have trucked to meet competitive conditions.

Q. In very recent years?

A. No, not within the last six or seven years, I should say.

Q. Where you ever made delivery by water you nevertheless, did you, figure the destination price by rail?

A. Not in all cases.

6058 Q. In some cases you do?

A. In some cases we do.

Q. In such cases, would you net more than your mill base?

A. Not in all cases, no.

Q. In some cases?

A. It is possible, but generally speaking I would say no, because there are other factors involved in water that would more than take up the slack.

Q. Well, generally speaking, your mill base is your maximum, is that right?

A. Pretty much.

Q. I wanted to ask you about the Iowa territory. What non-base mills are there?

A. Well, first let me say that we cover but a very small section of Iowa. I think we cover ten counties on the southwesterly portion of the State, and a little bit up the Missouri River. My knowledge of Iowa is pretty slim.

Q. Is the Hawkeye mill a non-basing mill?

A. I do not believe it is.

Q. And the Penn Dixie?

A. I do not believe that is, either. Any of the others, I don't know about.

Q. I asked you if it were a non-basing mill and you said "I don't believe it is?"

A. As far as I know, they are non-basing mills.

6059 Q. Where are the Penn-Dixie and Hawkeye mills located?

A. Close to Des Moines, I believe.

Q. Is there a Northwestern State Company there in the Iowa territory?

A. Yes, there is.

6060 Q. Who in your organization determines the mill base price?

A. The executives of the company, of which I am not one.

Q. And you do not sit in with them or consult with them?

A. They may consult me in some instances, but my opinion is not final by any means.

Examiner Norwood: As sales manager, do you ever quote a price that you figure out yourself, or have it done under you?

The Witness: Not a base price, no; not a base at our mill.

6061 By Mr. Wooden:

Q. In other words, that is not considered the sales manager's function in your organization?

A. No, sir; it is not.

Q. You establish base prices at your mill as they are determined by your executive committee?

A. By the officers of our company.

Q. And which officers make that determination?

A. Well, I get my orders from the Vice President in charge of sales.

Q. Who is that?

A. Mr. Cole.

Q. And who are the officers that determine that question?

A. Well, probably the president would be in the discussion with the vice presidents. I imagine that he would take in the operating vice presidents, but I really don't know. We have not had occasion in years of where we put a base on. They have always been there.

Q. I am talking about the prices at the mill, the base price at your mill.

A. That is right. The answer still stands.

Q. You have been consulted, have you not, as to what base price should be put into effect?

A. At various times, yes.

Q. Well, do you know from your experience in

6062 such consultations, how that price is arrived at?

A. I do not.
Q. You do not know what factors enter into it?
A. Not from my own knowlege, no.

6063 *Direct Examination by Mr. Wooden.*

The witness identified Com. Ex. 1112 as being a booklet entitled "Trade Ethics and Marketing Policies" issued in 1927, I think, by Lone Star of Indiana, a subsidiary of the International Corporation. There have been reissues of this booklet at various time and it has received a rather wide distribution among dealers, contractors, engineers, architects, public officials, and industrialists.

Q. Has it been distributed—how recently has it been distributed?

A. This has not been distributed in quite a num-
6064 ber of years now.

Q. What do you mean by quite a number of years?
A. Well, this has not been distributed in, I would say, probably six or seven years.
Q. Not later than 1931 or 1932?
A. I think it was a little further back than that.
Q. I notice on the flyleaf the date 1929.
A. That is probably when that was reissued.

Mr. Wooden: Your Honor, there are three portions of this pamphlet. One is entitled "Trade Ethics and Marketing Policies." Another is entitled "Cement Purchase." The third is entitled "21 Reasons for our Sales Policy." They are all bound together. I wish to exclude from the offer the third division entitled "21 Reasons for for our Sales Policy," because it seems to me it is irrelevant to the issues of this case and related to an explanation of the reasons for selling through retail dealers.

The other two pamphlets which are reproduced in this I wish to offer, with the limitation that the offer be confined to the portions of the printed document which I have marked in pencil, circled in pencil.

Examiner Norwood: Will—the record will show definitely what pages they are.

6066 By Mr. Zimmerman:

Q. With reference to this exhibit marked for identification No. 1112, when was it originally published?

A. My recollection is: about 1927.

6067 Q. In the publication of it did your company act individually and without consultation with other companies?

A. They did.

Q. It is the sole production of your company?

A. That is right.

Q. And in the circulation of it, you circulated it to the customers of your company?

A. Yes.

Q. That was the sole purpose of it?

A. Well, we circulated it to our customers, to contractors, and—

Q. (Interposing) —those that you hoped to make customers of?

A. Yes.

6074 Examiner Norwood: Let the record stand then, that this is the exhibit of the Lone Star Company only; that is, Respondents' Exhibit 21 is the exhibit of the Lone Star Company only.

6074-A (Pages, (as marked) 4, 5, 6, 7, 8, 12, 13, 14, 15, 19, 21, 22, 23, 25, 26 and 27, are received in evidence as Commission's Exhibit 1112, and the balance thereof as Respondent Lone Star's Exhibit 21, as indicated on the record.)

6079 By Mr. Wooden:

6081 Q. Is there a district known as the Hudson Valley district somewhat similar in character to the Lehigh Valley district?

A. Well, there is the Hudson River group, but you do not talk about it as the Hudson district.

Q. There is no Hudson district as such, but a group of mills located on the Hudson River?

A. Yes.

Q. How far apart are they?

A. Well, the Atlas Mill at the city of Hudson is probably two miles from our mill at Hudson Upper, and the closest mills to us are on the other side of the river at Cementon, and close to Catskill.

Q. How far are they from your mill, the Atlas mill?

A. It would be a guess, about 20 miles, I would say, on the other side of the river.

Q. You have a base price at your Hudson mill?

A. We do.

Q. Is your base price at that mill the same as the base price of other mills on the Hudson?

A. Yes, I think it is.

6082 Q. Which is the other mill which is twenty miles away from you?

A. There are several. One is an Alpha mill; another is North American mill and there is a mill that is not operating.

Q. How is the delivered price based on Hudson calculated from that point?

A. We use the same method there that we use in any other place. We use what is approximately the minimum line haul rate.

Q. Do other mills use the same approximately?

A. I do not know whether they use it; that is, whether Hudson, New York, uses that, or whether they meet our price.

Q. At any rate, the Hudson base price is the basis on which the going delivered prices are calculated in a considerable area up there?

A. No; it does not go very far.

Q. What is that area?

A. It usually takes in about the City of Hudson and Greenport, and a few little towns around there. Once you get out into the territory the 5½ cent rate goes into effect.

Q. Does the Hudson base price make the going delivered price in any New England territory?

A. A considerable portion of it.

6083 Q. What portion?

A. Western Massachusetts, part of Connecticut, New Hampshire, Vermont, and a portion of Maine.

Q. Is the Hudson price ordinarily higher than the Lehigh Valley base?

A. It is at present ten cents higher.

Q. Is that a customary differential?

A. There have been times when they were the same.

Q. Has that been a customary differential most of the time?

A. Well, for a good portion of the time, I would say, yes.

Q. Why is that Hudson base so generally higher than the Lehigh Valley base?

A. Well, I do not know that I can give you that answer, beyond the fact that it costs more to operate there than

it does in the Lehigh Valley, I would say. I know it costs you more in Hudson than it does in the Lehigh Valley.

Q. Is the Hudson District—is one of its principal markets in New York City?

A. Yes.

Q. Do the Hudson mills have an advantage in water transportation to New York?

A. Some of them do.

6084 Q. Does your mill?

A. No.

Q. Do you know what the difference between the rail transportation to New York and the water transportation is?

A. Well, it is pretty hard to say. It depends on the quantity and it depends on the facilities at the mills. It is really a hard thing to say. I cannot give you that definitely.

Q. What is the best you can say about it?

A. I think right now it would not be over five cents; somewhere along there. That is only a guess. I don't know.

Q. Has it been as much as ten cents?

A. There may have been times when that was true.

Q. How far west does the Hudson base price govern?

A. Well, it would go about half way, I would say, between Albany and Buffalo, on the main line of the New York Central.

Q. And then it would be what base price territory?

A. It would meet Buffalo coming the other way.

Q. Is there some common freight factor within the area where the Hudson mills are located, to points within that area?

A. I don't know as I understand that question.

6085 Q. What is this minimum line haul rate that you refer to?

A. It was five cents, I believe now it is five and a half cents.

Q. How far does that go? What territory does that cover?

A. Oh, I think it goes down about twenty miles, fifteen or twenty miles before the next jump takes place. Railroad rates are scaled by mileage to a certain extent.

Q. Do I understand that in the case of the Hudson mills, that when you get out beyond a certain point, that then the rates are all the same?

A. From the two mills at Hudson. I don't know about the mills on the other side. There is probably a wider difference coming east, whereas about the same differential would apply going west; in other words, the mills are not grouped as close in the Hudson district.

Q. Does the river there make a difference in the freight rate application?

A. Oh, yes.

Q. Are you at a disadvantage in that at your Hudson mill in shipping into New England, compared with the mills on the other side of the river?

A. At a disadvantage?

Q. Yes.

A. No, we are not.

Q. Do you get the same rate into New England?

A. To some points we have an advantage. Then,
6086 as the distance increases, the mills across the river kind of catch up with our rate.

Q. I am referring to New England.

A. Yes, going east.

Q. How is it that the delivered prices in the territory, before they catch up with you on that freight advantage, how is the delivered price calculated there?

A. On the Hudson mill.

Q. On your mill?

A. Yes.

Q. And your mills across the river have to shrink, in order to meet you?

A. They have to shrink.

Q. And in the territory where they have an advantage, do you have to shrink to meet their delivered prices?

A. Yes, if we go over there. Frankly, we do not go over there very much. There is not a terrible lot of business there and it costs you more to get it than it is worth.

Q. I call your attention to a statement on page 23 of this pamphlet, Commission's Exhibit 1112, that describes how the base price of the Lone Star Company is made up. You are familiar with it, I assume?

A. Yes.

Q. Referring to manufacturing costs, selling costs, loading and packing costs, taxes and depreciation
6087 and reasonable on your investment, and the total of those items equalling what you term your base price. Do you know how other base mills make up their base prices?

A. I do not.

Q. You do not know whether they make them up on that basis or not?

A. I would not know.

Q. You have never discussed it with any one of them to find out—

A. (interrupting) No.

Q. (Continuing) —or learned of it in any other way. The statement is then made in this pamphlet that your base price plus the transportation charged would constitute the delivered price in every market if you had no competition. You have described and outlined the territory in which your base price is the delivered price, I believe?

A. Yes.

Q. The statement is then made that your base price represents the maximum—I believe you said that this morning the maximum return which you received. What determines how far you will go into a territory where the delivered prices are made up of the sum of the other mills' base price and the freight from such a base point?

A. That is determined within our own organization at the time that we lay out the salesmen's territory.

6088 Q. But what are the factors that determine how far you will go?

A. The availability of business, that is, the availability of business, of our ability to get business. The availability of the business in the territory and the probable cost of us getting it, together with the return that we get at our mill.

Q. Well, so far as you go into territory where other base prices are operative, you reduce, do you not, the amount of your return at the mill?

A. We do.

Q. Now, do you have a lower limit below which you will not go in that return?

A. There are cases where business is available at figures which are probably lower than we would like to have. In that case, I have to get authority before we are even permitted to quote on it.

Q. What is the figure below which you have to get authority?

A. Well, we try to average it according to the amount of business we have, we try to stay within a reasonable average.

Q. Do you make your costs your lower limit?
A. I don't know what you mean by "costs."
Q. I will let you define it. "Costs" I am using in
6089 the sense—
A. With everything included?
Q. Yes.
A. There are some cases where we have used that as a limit. Generally it is not; it is higher than that.
Q. You sometimes then will take less than the total cost of the cement?
A. Only on special authority.
Q. Only on special authority?
A. Or in this condition—in territory which normally is good territory for us. That would apply with equal force or with real force today in both the New York market or New England, where your prices are very low.
Q. Your best territory, I take it, is the territory in which you get your full base?
A. That is right.
6090 Q. And the farther you go—
A. (Interposing(I beg your pardon. It is your best territory from the standpoint of price.
Q. That is what I meant. Yes. What is it that you compare with your costs to determine whether you will take the business?
A. Our net realized.
Q. Mill net, in other words?
A. Yes.
Q. I was trying to get some figure below which you would not go as a general rule.
A. Well, I do not know that I can give you an exact figure. They will vary according to your mills.
Q. Do you endeavor to get an average net realization at the mill?
A. We try to.
Q. That will be satisfactory, without particular regard to what the range of the variation in particular sales is?
A. Wr try to stay within the average. However, the range of sales is measured by the territor that we travel. We know in advance what that territory will give us, unless something else takes place in the meantime.
Q. In other words, you pick your territory on the basis of what will be profitable on the average?
A. Yes, and we pick it pretty close.

6091 Q. Where you have two mills whose territory adjoins each other, what is it that determines which mill will take the business?

A. The size of the mill, number one; the cost of the mill; and the availability of the business in the district involved.

Q. In other words, you try to allocate it to the mill that will show you the greatest net realization?

A. We do.

Q. I take it that the farther you go into the territory where another base price makes the going delivered price, the less your net realization is?

A. That is true.

Q. What is the approximate limit in freight that you can overcome or do overcome in that way?

A. Well, that is a hard question. The amount of freight that we overcome?

Q. Yes.

A. I do not know that there is any set amount. There are differences in every territory.

Q. Isn't there some kind of a maximum, on the average?

A. No. It would apply per mill.

Q. But at a given mill is there some kind of a maximum that would apply?

A. We try to stay within a certain net of our
6092 plant, net realized.

Q. Average net?

A. Yes. And we watch individual shipments, depending upon volume involved.

Q. As to individual shipments, what is the minimum net that you consider?

A. Well, we have taken in some instances, in some few instances, probably our cost.

Q. In some cases, you have gone below, as I understand it.

A. In some instances, probably so.

Q. Is your cost the usual and general limit, with some exceptions, or is there some absolute limit below which you would not go?

A. No. We try to average our general net realized over all per mill, and we try to stay within a limit. Our limit of absorption probably wont run over 15 cents per mill, unless there are certain conditions, such as New York, Boston and so on, that change the picture.

Q. 15 cents a barrel?

A. Yes. It probably wont reach that.

Q. Now, in this pamphlet, Exhibit 1112, your company goes on, after describing how it makes up its base price, and describes how it meets the base prices of other mills. You stated here, on page 23, that in those cases you quote a price which you expect would be identical with
6093 that asked.

6094 Q. Yes.

A. Not under normal conditions. There are however conditions which make it necessary.

Q. Now, as to other companies?

A. I don't know.

Q. You don't find the other Lehigh Valley mills pushing that 10-cent base price advantage into the territory of the Hudson Valley mills, do you?

A. I cannot tell in the case of those mills that have mills in both sections.

Q. There are some that do not?

A. There are some that do not, that we find generally quoting about the same price that we do.

Q. They are not taking advantage of their 10-cent lower base price?

A. They have a wider territory, which offsets the differences in base to some extent.

6095 Q. On page 25 of this Exhibit 1112, your company raises the question as to how you know what prices your competitors will quote and say "you never do know, you can only anticipate." You anticipate them, I take it, on the basis of past experience?

A. Until we find some thing different.

Q. In other words, the price that you once learn is in effect, you assume it will continue until you get other information?

A. That is right.

Q. When it comes to bidding on large contracts, like State Highway Commissions, you still assume that the price you last knew was in effect, would remain in effect for that particular purpose?

A. Yes, sir.

Q. Even though the quantity involved might be very attractive?

A. Well, I don't see that that has anything to do with it.

Q. It is not the custom in the cement business to make lower prices on the ground of extremely large quantities, is that right?

A. Well, it has been done, so you cannot say that it is not the custom. It has been done.

Q. But it is not the custom?

6096 A. Well, what is a large quantity?

Q. Pardon me?

A. What is a large quantity?

Q. Well, I would let you fix it. Wouldn't you think that several hundred thousand barrels would be a large quantity?

A. Not necessarily.

Q. How much would you want—a million barrels? Would a million barrels be a large quantity?

A. It depends on the question of how fast it would move out and the conditions surrounding the delivery of the cement.

Q. Do you remember the State of Illinois back in around 1932 or 1933 wanting bids on as much as three million barrels?

A. Yes, sir.

Q. Would you say that was an attractive and large quantity?

A. It would be, if they took it all, but they did not.

Q. Do you remember whether or not all of that was offered to the lowest bidder?

A. Yes, it was.

Q. Was there a low bidder on that entire quantity?

A. I don't know.

Q. Well, isn't it the custom, as a matter of fact,

6097 in the industry, Mr. Neylan, for mills to make no concessions on account of quantity?

The Witness: Well, we have seen any number of instances where cement manufacturers have quoted lower prices. Now, I will grant you that there are a large number of cases where that has not taken place, but I do not see that you can say that that is a custom not to do it, because it has been done and it probably is being done right now.

By Mr. Wooden:

Q. You do not have any knowledge of its being done at any particular place, do you?

A. Well, we have had some instances of it quite recently.

6098 Q. Of large quantities?

A. Yes.

Q. The price being cut?

A. Yes.

Q. But on the whole, hasn't it been the custom and practice of the mills in the cement industry to make the same price for large quantities as for small quantities?

6099 A. I don't think you can say that, because we have had year after year very large quantities that were bid for and the price was reduced drastically, so how can you say it was not the custom?

Q. I am not referring to the price being lower at one particular time than another, but I am talking about whether the price made on say a thousand cars or 500 cars is just as low as the price that would be made on 10,000 cars?

A. No. We have had any number of instances where the 10,000 cars received a lower price.

Q. Any number of instances?

A. Yes.

Q. Within what recent time?

A. Within—well, within the last ten years.

Q. Have you had any substantial number of such cases within the last three years?

A. Yes.

Q. Have you had any such cases during the N. R. A. Code period?

A. Yes, sir.

Examiner Norwood: Was that concession provided for under the code?

The Witness: No, your Honor. In my opinion, it was a violation of the code.

6100 Q. I notice in this pamphlet, Commission's Exhibit 1112, page 5, your company makes the statement that it will sell the United States Government, railroads and State governments direct and at the same price and under the same conditions as dealers.

A. That is true; we made that statement.

Q. Is that still your policy?

A. That is generally still our policy.

Q. Well, then, you make the same price to the Govern-

ment and State governments and the railroads, no matter how large the quantity, that you make to dealers?

A. We do.

Q. And you then make no reductions to those purchasers on account of their purchasing larger quantities than dealers purchase?

6101 The Witness: Well, I won't go along with you on that premise.

By Mr. Wooden:

Q. Well, I want you just to state what the facts are.

A. In our case, the dealers buy more from us than the Government does.

Q. You are treating them as a class, and I am asking you as to individual purchasers among dealers.

A. That may be true. Individual purchases by the Government may be larger than the individual purchases of the dealer, but in the aggregate, the dealer business has meant to us over a period of years more than the Government business.

Q. All right. But do you make any difference in the price between your various dealers depending on the quantities they purchase?

A. No, we do not.

6102 Q. Is it all on a carload basis?

A. All on a carload basis.

Q. And if a dealer buys a thousand carloads, he gets the same price as if he buys one, is that right?

A. That is true.

Q. Therefore, if the Government buys a thousand carloads it gets the same price as the dealer buying one, is that right?

A. That is true.

6103 Examiner Norwood: You would never deviate from your regular price in the case of a sealed bid?

The Witness: Not unless I am told to do it, your Honor.

Examiner Norwood: What is your custom usually?

The Witness: To quote the same price.

By Mr. Wooden:

Q. It is seldom that you are told to deviate, is it?

A. Very seldom, but there have been instances.

Q. On page 7 of this Exhibit 1112, I notice that the pamphlet of your company stated that you would sell f. o. b.

cars at the mill in sales to the United States Government quoted either f. o. b. destination or f. o. b. mill. Have you continued to quote the Government f. o. b. mill?

A. In parts.

Q What do you mean by "in parts?"

Mr. Zimmerman: May I interrupt just a moment? Counsel has not read all of the paragraph. The language says, "giving consideration at all times to land grant rate concessions," doesn't it?

Mr. Wooden: Yes.

The Witness: In the case of land grant rates, we do quote a price that virtually amounts to a mill price.

6104 By Mr. Wooden:

Q. Based upon an estimated land grant rate?

A. Well, estimated or actual.

Q. But it is the so-called Government destination cost that you quote, isn't it?

A. That is right. It is cost at destination.

Q. Consisting of your base price where your base price is applicable, plus the element that you include for land grant rate?

A. That is true.

Q. Do you sometimes quote another mill's price, base price, plus estimated land grant rate?

A. In other words, we follow about the same procedure we do in our commercial business, using land grant rates instead of commercial rates.

Q. Was there a time when you sold the United States Government f. o. b. mill strictly?

A. Yes, sir.

Q. Strictly?

A. Yes.

Q. Without any land grant rate considerations?

A. We did.

Q. When was that?

A. We sold them in Texas for a good many years.

Q. Texas has no land grant rate as I understand?

6105 A. That is true.

Q. I am asking you if there was a time, not a place but a time, when you sold the Government f. o. b. mill without any regard to land grant rates?

A. Yes, we sold back in 1925, or I think, in 1926, or thereabouts. We tried to sell them at mill, but we did not succeed.

6106 Q. The Government has frequently asked for prices F. O. B. mill, hasn't it?

A. That is true.

Q. How long has it been since you did not quote prices strictly F. O. B. mill to the Government?

A. Oh, it must be probably ten years or more. I don't know exactly.

Q. Did you discontinue quoting F. O. B. mill prices to the Government prior to the N. R. A. Code?

A. Yes, we did; as F. O. B. prices.

Q. What I mean: as F. O. B. mill prices. What led you to discontinue quoting the Government F. O. B. mill?

A. We found it was a useless gesture.

Q. What do you mean by that?

A. We never got any business, because the Government does not buy there.

Q. Does that mean that if the Government did wish to buy F. O. B. mill, you would be glad to sell them on that basis?

A. I don't know what would happen under those conditions. The Government will have to change its position first, and then my company will decide what to do.

Q. You cannot say whether your company would be willing to sell F. O. B. mill to the Government, as it once did?

A. No; I cannot say, Mr. Wooden, any more than
6107 you can say the Government would be willing to buy there.

Q. Do you happen to know whether they are now seeking to buy F. O. B. mill?

A. Yes, I do.

Q. And you don't know yet what your policy is going to be in reaction to that invitation?

A. No, because the bids have only come out in two places that I know of that concern us, whether land grant rates or anything of that kind.

Q. Hasn't the Government for a number of years asked for bids on a dual basis, F. O. B. mill, and destination?

A. Yes, they have.

Q. And have you not, instead of quoting F. O. B. mill, quoted a destination cost to the Government?

A. Or a destination price.

Q. Yes. I notice on page 7 of this pamphlet, Exhibit 1112, your company states that States would be quoted

F. O. B. rail or water final destination. Have you continued to quote States on a destination basis, figured on a water transportation?

A. We have in some instances. There are not many places where we are in a position to use water. We have some, however, delivered by water.

Q. You have New Orleans, haven't you?

A. Yes.

6108 Q. Do you quote the State of Louisiana for delivery by water?

A. They don't buy.

Q. Don't buy at all from you?

A. No. They don't buy at all.

Q. They have bought, haven't they?

A. But never by water, that I know of.

Q. You have not had any occasion where the States wanted quotations delivered by water?

A. Not that I recall; no, sir; we have had in North Carolina. We have had a few in North Carolina.

Q. Is that delivered by tidewater, or have you had it along by ocean?

A. In some instances, yes.

Q. In such cases do you quote the delivered price, calculated on a rail basis?

A. Well, we did in some cases, and we quoted a price at the mill in other cases.

Q. What mill would that be? Norfolk?

A. Norfolk.

Q. You mean that the State of North Carolina has been able to buy from your company F.O.B. Norfolk?

A. Yes, sir.

Q. Have they taken advantage of it?

A. In some few instances, yes, where the job was
6109 set up so that they had to move it by water. But they don't want it ordinarily.

Q. When you make a change in your base price, do you give advance notice of that prospective change?

A. We give five days notice of an advance.

Q. To whom do you give such notice?

A. To our dealers.

Q. Anyone else?

A. To the people who are on our mailing list for quotations, and so on.

Q. Other than dealers, who would they consist of?

A. Some few interested contractors that may have jobs pending at the time.

Q. In the event that other mills do not see fit to go along with your change, if it is an increase, are you able to maintain it?

A. No, sir.

Q. You have to drop back to where you were before?

A. We have to drop back.

Q. In case it is a decrease, they have to go along; is that right?

A. Either that, or forego the business.

Q. Is that five-day notice of advance a customary practice of long standing in the industry?

A. As far as I can recall, our company has al-
6110 ways used it.

Q. In the event of a decline in price, do you make good on that decline for business taken prior to the decline?

A. Yes, we do.

Q. To what extent?

A. Well, ordinarily it is about five days. It is five days. However, there have been some cases where, in isolated instances, we have probably stretched it one or two days.

Q. Is that five-day decline period and reimbursing purchasers for the difference within that period—is that a common practice in the business?

A. Well, it has always been more or less followed. I won't say that the stipulated five days has been followed, but in all the time I have ever been in the cement business you always may get to the dealer in case of a decline, that is, the purchaser, not only the dealer, the contractor as well, and also when it was in transit or had just been delivered.

Q. When was the five day period inaugurated?

A. I don't know. I think probably we started the five days.

Q. Wasn't that inaugurated under the Code?

A. No, I think it was before the Code.

Q. The Code covered it, however, did it not?

6111 A. Yes, the Code had to carry something of that kind with regard to part of the price filing.

Q. I notice on page 13 of the pamphlet, Exhibit 1112, you say that you will permit change of destination en

route or in transit only by written instructions from the company?

A. That is true.

Q. What is the reason for objecting to changes of destination in transit?

A. Well, because, in the first place, we are selling it on the basis of a delivered price. It is our material until it reaches destination, and nobody has the right to touch it unless they have our authority to do it.

Q. Have you ever had that question litigated, as to whether it was your cement until it reached destination?

A. I have never heard it questioned, myself.

Q. Your invoices carry, do they not, the delivered price, and extended to make the total, depending on the quantity, and then the freight figure on the face of the invoice, and that is to be deducted by the consignee?

A. That's true.

Q. And the consignee pays you for what is left after making the freight deduction?

A. That's true.

Q. And the freight is paid by the consignee, direct to the railroad, isn't it?

6112 A. Yes, sir. Except in the cases where we prepay it.

Q. And those are cases where there is no station at the point of delivery for collection of freight?

A. Not necessarily. In case of any one company shipping into a territory on a prepaid basis, that will cause everybody else to do the same thing.

Q. Well, there is not a general custom, is there, of prepaying freight, except where required by the railroad.

6113 A. Yes, that is generally true.

Q. As a matter of fact, wasn't there—

A. (Interposing) With the exception, however, that we prepay on States and so on.

Q. Wasn't there any rule in the code against prepayment of freight; with those exceptions?

A. I think there probably was. I do not recall it offhand.

Q. I still am not clear as to the reasons why you object to the diversions, even though you claim it is your property until it reaches destination. Why do you object to it?

Mr. Leisure: I think that is a sufficient answer, if they have title to the property. I think that is a sufficient answer to the question.

Examiner Norwood: Objection overruled.

The Witness: There is another reason. If you buy a car of cement from me and tell me you are or you will pay me a certain amount delivered at a certain point, and you change that delivery point you are breaking your contract with me, and I don't think you have any right to.

By Mr. Wooden:

Q. Aside from that, let me ask you this: Is it one reason for your objection to diversions in transit that it will encourage or permit purchasers to divert and get the cement into a place at less than the regular destina-
6114 tion price there?

A. That is probably one of the reasons, but in my opinion it is dishonest.

Examiner Norwood: You mean diversion? You consider diversion dishonest?

The Witness: Yes, sir.

By Mr. Wooden:

Q. What harm does it do to the shipper?

A. It takes some of the shipper's money away from him, for one thing. In other words, he gets the benefit of a price and then he gets the benefit of a freight allowance that usually he does not have to pay. In my opinion he is stealing that money.

Q. He is paying you the same in each particular case?

A. It doesn't make any difference. He usually pays the railroad less money than we allow him on the invoice, and to that extent in my opinion he is stealing the difference.

Q. As far as the shipper is concerned, you would get neither more nor less under that state of affairs; you would get the same amount?

A. We get less than if we shipped it to the point that he reconsigned it to.

Examiner Norwood: How is that?

The Witness: Because we would allow him a greater amount of freight than he pays.

6115 By Mr. Wooden:

Q. You would not net any less though, would you?

A. We probably would.

Q. You are comparing it—

A. (Interposing) There are cases where we would.

Q. You are comparing it to his price in the event that you sold it to some one else at that destination?

A. That is right.

Q. But selling it to him alone, your net would be the same whether he diverts it or not?

A. Doesn't it follow, Mr. Wooden, that if he diverts a car from one point to another, that there is a demand for a car of cement at the new point that we have an opportunity of selling, therefore he is taking it out of our hide.

Q. But your base price, you would net that in either case?

A. Not necessarily. It may be in a territory where we have to absorb some freight.

Q. Taking it in a territory where your base price would control, you would net the same in either case?

A. That might be true.

Q. In other words, one of your objections is that if he diverts it that way, you would get it into the other at less than the destination price there?

A. That is right; that is one of the objections. However, there are other objections as I have outlined.

6116 Q. I notice in Exhibit 1112, on page 22, your company makes statements about the quality of cement to the effect that there is a standard specification that sets a minimum requirement that must be met or exceeded, thereby placing all cement on an equal footing with regard to minimum quality but that while all cement must pass that standard specification, most have physical attributes far in excess of the minimum. I suppose the Lone Star has those latter attributes being above the minimum?

A. Well, our cement is above the minimum, naturally.

Q. It is?

A. It is. As a matter of fact, most of them are.

Q. Not all of them?

A. All of them, I would say.

Q. They are above the minimum in different degrees, are they not?

A. Well, that is a question I cannot answer. You can take 14 experts and have them all test different brands of cement and get 14 different answers. You take 14 different contractors and try to sell them on the idea and all 14 will give you the horse laugh.

Q. Nevertheless, they will give some preference, will they not, to the better quality?

A. No, sir, they will not. Maybe a highly technical engineer might take that into consideration, but nor-
6117 mally speaking, no; generally speaking, no.

Q. Doesn't some cement set much more quickly than others?

A. It is a different type of cement.

Q. Even among the standard cement, doesn't some set more quickly than others?

A. No appreciable difference.

Q. How do you reconcile your statement that the differences in the quality of standard cement are not substantial with the statement in the booklet that some of the cement has physical attributes far in excess of the minimum?

Mr. Zimmerman: Will counsel mention the page?

Mr. Wooden: Page 22.

The Witness: Well, practically all cements have attributes in excess of the minimum.

By Mr. Wooden:

Q. But some, you say in the booklet, have attributes far in excess?

A. Some particular quality may show up in one particular brand of cement that is not present in another brand.

Q. The booklet, on page 22, under the head of
6118 "Transportation," it refers to certain charges being the same to all individuals, and that then existing rates are published by the railroads. That known transportation factor did not exist as a definite thing in the case of truck or water transportation, did it?

A. It did not and don't.

Q. In other words, all of the transportation charges that are discussed in the booklet are on the basis of railroad transportation rates?

The Witness: I think that is generally true.

By Mr. Wooden:

Q. And if you had transportation figured on some other basis where the rates were not as certain and
6119 definite as in the case of railroads, would it then be possible to have the same destination price from various mills?

A. Would you mind reading that question again?

(The question is repeated.)

The Witness: What do you mean by "various mills?"

By Mr. Wooden:

Q. Or competing mills located at different places?

A. It would depend upon their policy. It would depend on the policy of the company. If for instance we were using water transportation or truck transportation and we quoted destination prices at a certain destination, then it would be either up to our competitors if they wanted that business, to meet that price.

6120 Q. But they would not know what it was if figured on a basis other than railroad rates, would they?

A. They would know what the price was; certainly.

Q. After it was in effect?

A. Yes. If we followed the same practice, under those conditions, that we follow now, there would not be any difference in the availability of the price to competitors.

Q. Some competitors would be located only on rail and others on rail and water transportation.

A. That may be true.

Q. And the rail shippers would have to meet the lower delivered price if they were based upon water transportation?

A. That is right; if they wanted the business.

Examiner Norwood: Suppose those bids were submitted simultaneously?

The Witness: Well, your Honor, one company would be clearly out of the running. That is the only thing that would happen there, on that particular bid.

By Mr. Wooden:

Q. You getting the same base price in your base price territory, you would get that no matter whether you shipped by rail, by water or by truck, wouldn't you?

A. If we did the shipping and we followed that and we handled our own trucks.

6121 Q. Then why don't you sell or quote on the basis of delivered price calculated by the cheapest form of transportation?

A. That is a matter of policy. That is set by our company.

Q. You don't know why you don't?

A. I have my own opinion of it.

Q. Will you give it?

A. But yet I get my instructions.

Q. Will you give your opinion?

A. There are several factors involved.

Q. All right.

A. One is the nuisance of it, in handling the smaller quantities, and so on, the large number of vehicles that you have to load.

Q. You are speaking of trucks now, of course?

A. Yes.

Q. Are some of your mills located on water?

A. Yes.

Q. You ship by water?

A. In some instances, yes.

Q. Why don't you sell there as f.o.b. mill instead of destination?

A. Because so far as our mills are concerned, generally speaking, the cost of the handling per barge is in most instances just about equal to rail.

6122 Q. But being "just about equal" would not make the price delivered the same as if delivered by rail, would it?

A. Yes, it would. As a matter of fact, "just about equal" would put the car in a position of outshining the boat.

Q. But they would have to be exactly equal to get the same delivered prices, wouldn't they?

A. The delivered price in the case of water shipments does not govern at all. It is the cost of the man who is getting that consignment on the job where he is going to use it.

Q. Yes?

A. He has to handle it in larger quantities on boats, because your boat rates are usually predicated on larger quantities than carload. You are up against special loading conditions. It entails considerable hardship on us, because it usually interrupts the inbound flow of materials which our mills are equipped to handle.

Q. You take all those things into consideration in figuring your delivered price by boat on the same basis as by rail?

A. Yes, we do.

Q. As a matter of fact, your delivered price is the same no matter how you ship it; isn't that correct?

A. Not in all cases.

Q. In the great majority of cases?

6123 A. In some cases we have sold on barges at the mill.

Q. I am talking about your delivered price; if you sell at the mill you don't have a delivered price?

A. No; we have at times put in prices calculated on water rates, and sold on that basis.

Q. Where and when has that been done?

A. We have done it in Virginia and North Carolina, we have done it in Louisiana in some instances.

Q. Have they been exceptions?

A. There are exceptional jobs that require it.

Examiner Norwood: Was that in the last two or three years?

The Witness: Oh, yes, we do it right along.

By Mr. Wooden:

Q. When you set a base price at your mills operative in certain territory, and other mills go into that territory, they meet your destination prices, as I understand it, and likewise, when you go into the territory of other base mills, you meet their delivered prices? Is that right?

A. We do.

6126 Q. And wouldn't you expect that to be the way your total sales figures are built up by seeing how much you net from each purchaser and adding them together?

A. After they leave us, they go to the accountant department and I don't know what they do with them. There is a monthly sales report from each one of our divisions, which shows the total number of barrels sold, the total number of obligations, cancellations, new business, and the net realized in each case.

Q. Of each mill, you mean?

A. Of each mill.

Q. And the total net realized divided by the number of barrels sold would be your average mill net, I take it, per barrel?

A. Well, you get the average net realized in that report.

Q. And is it derived in the way that I suggested, by dividing the number of barrels into the total net sales?

A. Yes; I have made up those reports hundreds of times myself when I was in a division office. Take each shipment and extend the amount and divide it by the

number of barrels and it gives you the average net for all of your shipments.

6128 A. Well, let us assume we have a 59-cent rate from Hudson and a 72-cent rate from the Lehigh Valley. That has happened in many cases. There is a difference of 13 cents.

Q. In favor of the Hudson Valley?

A. In favor of the Hudson Valley. So naturally, the Lehigh calley mills would have to absorb the 10 cents difference in the rate and the 3 cents.

Q. That is what I was trying to get at. Accord-
6129 *ing to the diagrams on pages 26 and 27 of the pamph-* let Exhibit 1112, the diagrams and the discussion are based, are they not, that all three mills involved are basing point mills?

A. So it happens here.

Q. Now, in the event that Mill C on those diagrams were a non-basing point mill and the market were moved in the way that it is moved on the second diagram, a non-basing point mill would add that difference or advantage to that in freight to the base price, would it not?

A. They would net more than they do now by the difference in the factors from the other two mills.

Q. And in the case shown here, just for illustration, it would have amounted to 25 cents a barrel, wouldn't it?

A. No, 15 cents a barrel.

Q. No. In the first one, the freight rate is 40 cents from Mill C to the market, and in the second one it is 15 cents from the mill to the market. That means adding the 25 cents difference to the base price.

A. Which one are you looking at?

Q. (Indicating).

A. You pointed to the other one. (Examining) It would make the price at that town $2.25 instead of $2.10.

Q. And what was it?

A. $2.10 here. (Indicating)

Q. And over here (indicating) it is $2.05?

6130 A. Yes.

6137 Q. And the base price of your company is what you say in the booklet was the price that you would have obtained everywhere if you had no competition?

A. That is true.

6139 Q. Do you use the Institute freight rate books in figuring back the freight from destination to base points?

A. We do.

Q. After you determine what base point price applies, you thereafter go on the assumption that that is the base price?

A. If we find enough evidence to point to that, yes.

6140 Q. Does that mean that when they show themselves a sufficient number of times, you can conclude that that is the base price?

A. Yes.

Q. And you cannot determine any such thing from a non-base mill, and you do not even bother to figure them back?

A. Oh, yes, we do figure them back. I thought you what net realized they got. When we find prices in the field, we check them back to every point.

Q. You do then know what net realized price at the mill a non-base mill nets?

A. Yes, but in our terminology, we usually carry it back to a cross figure. That is, our particular company usually deals in gross figures.

Q. You mean—

A. (Interposing) Cloth.

Q. Multiples of five?

A. No, we carry it back to a price in cloth.

Q. Aren't those prices ordinarily multiples of 5?

A. Not necessarily.

Q. Usually?

A. No. We have had any number of prices that were multiples of 1,—

Q. I know you have had at times base prices that were multiples of 1, but I am just basing my question upon

6141 a scanning of a large number of base prices and asking if they are not usually in terms of multiples of 5?

Mr. Zimmerman: May I interrupt to ask that you elucidated what you mean by multiples of 5.

Mr. Wooden: Oh, say $1.50, $1.65, $1.70, $1.75, and not $1.72 or $1.73.

The Witness: Well, I think that is true generally of most of our prices, most of the mill prices today, but again I say there is no wedding between the multiples of 5 and the base prices, because we have had a price of $2.16 at Norfolk, $2.14 at Dallas, $2.01 at New Orleans, and the same thing was true in 1930, I believe it was, pretty nearly throughout the country.

By Mr. Wooden:

Q. That is what I was leading up to, whether or not in times of more severe competition like in 1931 and 1932, that that 5 cent multiple tended to break down and you had all sorts of in between base prices?

A. Well, it did not break down; it was broken down.

Q. All right, however it happened, didn't that create a lot of those prices in multiples of 1?

A. Yes, but after all it made no difference.

Q. I understand that at the present time the base prices are generally in terms of multiples of 5?

A. That is true.

6142 Q. How long has that been true?

A. Well, in our case it was only since March, 1937, when we changed the Norfolk rates.

Q. What change was that?

A. Norfolk.

Q. What was the amount of the change?

A. Six cents down.

Q. What was the occasion for making that change?

A. Well, I was given instructions to lower the Norfolk base. Change the price at Washington.

Q. For what reason?

A. Competitive conditions.

Q. Can you say what they were?

A. We found people quoting prices lower than our prices and we reduced our price to meet them.

Q. By 6 cents, is that right?

A. Yes.

Q. Did that result in a $1.70 base at Norfolk?

A. Yes. $2.10 in cloth.

Q. The same thing as the $1.70 figure without sacks? If you figured back to get the mill net return on a non-basing point mill, you would find all sorts of in between figures, would you not?

A. Yes.

Q. Multiples of 1?

6143 A. Yes.

Q. And you have similar multiples of 1 when you go into territory governed by another base price?

A. Well, I do not want to appear exacting, but it would be in multiples of 2, because your freight rates break on the half-cent which is equivalent to 2 cents a barrel.

Q. There are some differences though in regard to

freight rates that are—that result in a difference of only one cent, aren't there?

A. Probably on a fraction, yes.

Q. And doesn't your Institute freight rate book nevertheless base itself upon multiples of 2?

A. No, you cannot say that now. Your recent freight change I believe changes that.

Q. It was true until that recent freight change?

A. Well, your freight rate breaks in multiples of 2. If the Institute freight rate book showed in multiples of 2, that is the way the freight rates were.

Q. Has your company ever made it a practice to sell all purchasers on an f.o.b. mill basis?

A. No, sir.

Q. Have you ever known a time in the industry when some companies did sell on an f.o.b. mill basis?

A. Not of my own knowledge, no.

Q. Have such cases come to your attention dur-
6144 ing the time you were connected with the industry?

A. No, I have never had any connected story of it.

Q. Were you familiar with the letter that the president of your company wrote to the Governor of Illinois back in 1933 with reference to the company's reasons for not selling f.o.b. mill?

A. I may have seen it, but I am not very familiar with it. He did not discuss or consult me about it.

Q. You are generally familiar with it, are you?

A. No.

Q. Who was the president of your company in April, 1933?

A. I think it was Mr. Struckman.

Q. Is he now dead?

A. He is dead.

The witness identified Com. Ex. 1113 A to C as purport-
ing to be a copy of a letter from his president to
6145 Governor Horner of April 28, 1933. It is 5 years since the witness has seen the letter, however, and he is not familiar with it. His recollection is that he saw it at the time. He thinks he recognizes this as a copy of it.

6146 New York City, N. Y.
May 11th, 1938

6147 JOHN F. NEYLAN, previously sworn, resumed the stand and testified further as follows:

Mr. Leisure: Mr. Neylan, when we closed last evening, Mr. Wooden showed you a letter, Commission's Exhibit 1113-A, B and C. I believe you said you had seen it on or about that time. What is the date of the letter, please?

The Witness: April 28th, 1933.

6149 Mr. Leisure: I will not make any objection to the
6150 letter.

(COM. EX. 1113-A, B and C was offered and received in evidence.

6151 *Direct Examination by Mr. Wooden*
(Continued)

Q. Before we go further, Mr. Neylan, I want to ask on the record what I informally, after adjournment last night, mentioned to you. Will you produce for the record a statement showing the mill base prices of the Lone Star Company or companies since January 1, 1933, and also a list showing the mill base prices of other companies that you recognized during that same period?

A. I will.

6153 Q. Does the same general condition of having delivered prices equal at given destinations exist within the Lehigh Valley district as without?

The Witness: I cannot say that that is true from
6154 my own knowledge. We meet prices as we find them unless they are our own price.

Q. Exhibit 1112 describes and explains from the company's standpoint why delivered prices are generally identical, I believe, doesn't it?

The Witness: This book states that we either quote our own price or we meet the competitor's price.

6155 Q. Well, doesn't it say on page 25, after describing the method:

"This usually results in identical quotations being sub-

mitted by several manufacturers at a given time and place."?

Examiner Norwood: I think the exhibit speaks for itself.

The Witness: It so states.

By Mr. Wooden:

Q. What I want to find out is whether that condition of generally identical delivered prices exists within the Lehigh Valley District as well as without?

A. Generally speaking, I think that is true. You have to either man's price or forego that business.

6164 Mr. Wooden: Your Honor, I offer at this time, the exhibit previously identified by Mr. Widman of the Commission's staff, as 289-A, D, K and L. They consist of two letters passing between Mr. Blaine Smith of the Penn Dixie Corporation and Professor Burns.

Examiner Norwood: Is there any objection to the offer?

Mr. Leisure: That comes under the Burns and Clark material that we have already objected to, your
6165 Honor. We make the same objection as we have made before as to that material.

Mr. Wooden: These two particular letters are not themselves among the pending exhibits.

(COM. EX. 289-A, B, D, K, and L was offered and received in evidence.)

By Mr. Wooden:

Q. Now, Mr. Neylan, in a letter to Professor Burns to Mr. Smith in July of 1935, Exhibit 289-B, he makes this statement: "You will remember that we had discussed conditions in the Lehigh Valley district and it has emerged that outside the area governed by the arbitrary minimum freight and inside the area in which the freight rates are not uniform from all mills, Northampton is regarded as a base." Does that coincide with your understanding?

6166 A. It does not. We do not so consider it.

Q. And in Mr. Smith's reply to that statement, Exhibit 289-L, he says: "The Northampton base price which applies for the Lehigh Valley district is quite frequently changed by mills located in the Lehigh district at points other than Northampton. While I cannot give you the names of all of the companies that have initiated

price changes in the Lehigh Valley district in recent years, I have checked back through several of our files and find that some of the changes during the past seven years have been made by Lehigh Valley, Lone Star, Alpha Portland Cement Company, Lawrence Portland Cement Company and Atlas Portland Cement Company."

What mills in the Lehigh Valley district within your district, have initiated changes in the Northampton base?

A. I don't know of any mills that changed the Northampton base outside of Atlas, who maintains a mill at Northampton. We have changed our base at Nazareth.

Q. And the base prices of the various mills within the district are the same ordinarily, I understand?

A. They are at the present time, but they have not in the past and I have no assurance they will in the future.

Q. Your booklet states, however, "Assume that the prices known to be in effect will continue until information to the contrary is obtained."

A. Until we find information in the field that
6167 changes what we already know to exist at the present time.

Q. In this letter of Mr. Struckman to Governor Horner, Exhibit 1113-A, B and C references are made to experiences of the industry in trying out the theory of f.o.b. mill prices. Do you know anything about such experience?

A. I don't know what experiences he was referring to.

Q. Well, he says here on 1113-A "Throughout the development of the cement industry, the theory of f.o.b. mill prices has been tried many times."

A. I am not competent to pass on that.

Q. It has not been tried within your knowledge and experience?

A. We have had mill prices at different times, yet, but what theory was back of it,—what he had in mind I have no way of telling at all.

Q. When you say you had mill prices, do you mean you had your mill base prices?

A. We had prices that we sold to trucks at the mill or other people at the mill.

Q. You discontinued that trucking, as I understand it.

A. Yes, sir.

Q. Completely at all mills?

A. I don't believe we are trucking at any mill at the present time.

Q. But with that trucking out of the picture, you
6168 do not sell even at your base mills on an f.o.b. mill basis, do you? You require that the purchaser take it out—take it at a delivered price?

A. We sell at destination prices with a few exceptions.

Q. What you get in such cases where you sell on your own base, the mill base is all you get out of it, isn't it?

A. Generally, yes.

Q. That being so, what difference does it make whether you sell f.o.b. mill on that mill base price or delivered on that mill base price?

A. What difference does it make to us?

Q. Yes.

A. It is a matter of policy that we sell on the basis of delivered prices only.

6171 Q. In addition to your connections with the Lone Star Company that you have described for us, were you also a member of the Code Authority during the NRA period?

A. I was for a period of time.

Q. Were you also a member of the Trade Practice Committee that followed the Code Authority?

A. For a time, yes.

Q. Until the Committee was discontinued?

A. I believe that is so. I was not very active toward the latter part.

Q. Have you held any official positions, or have you been prominent in any of the Committee activities of the Cement Institute?

A. I have not, beyond my experience with the Code Authority.

Q. And the Trade Practice Committee?

A. And the Trade Practice Committee.

6172 Q. I am referring to Commission's Exhibit 1113-B, which is a part of your Mr. Sturckman's letter to Governor Horner. Referring to selling F. O. B. mill prices, he says:

"The idea is not a new one; it has been tried many times, but always proved impractical."

I understand you never tried that impractical method?

A. I don't know what he meant by "impractical." I don't know what he had in mind when he wrote the letter.

Q. He goes on further:

"Unscrupulous purchasers, quick to discover the
6173 weakness of the method, were frequently able to defeat the purposes of the manufacturer by ordering cement shipped to destinations which required the manufacturer to considerably shrink his base price. Such shipments, while in transit, were often diverted to a destination, or destinations, in a manufacturer's trade territory, where his full base price governed, the unscrupulous purchaser thereby saving the difference between the manufacturer's full base price and the shrunken price at which the sale was made."

Do you have any disagreement with such statements?

A. Well, those are his statements.

Q. Do you have any disagreement with him?

A. Not particularly, no.

Q. He goes on to say in the same connection that "A buyer who bought F. O. B. mill and then diverted, enabled him to undersell his honest competitors." Do you have any disagreement with that?

A. That might be possible. It might be true and it might not.

Q. Have you found it true in your experience as a sales manager?

A. We have found it true in some instances, yes, and we have found where it was not true.

Q. At any rate, whether he undersold or not, he got
6174 into the territory outside of his own territory by diverting it?

A. If he has diverted it to a different destination. I don't know what that would be.

Examiner Norwood: Do you think that is a fair practice?

The Witness: I do not.

6176 Q. Referring to page 25 of your company's book-
let, Exhibit 1112, I find this statement: "Every mill
6177 has to a certain extent the advantage over distant mills in its nearby territory. Unless its 'mill base' price is unreasonably high, it can always have some advantage. If that price is unreasonable, it is an invitation for the invasion of its nearby territory by competing mills."

Do you find that?

A. Yes.

Q. If you sold on an f. o. b. mill basis instead of delivered, that would still be true, wouldn't it, that if your price would be unreasonable, it would be an invitation for an invasion from competing mills?

A. Well, it depends upon what the "unreasonable" is. That is not explained here. "Unreasonably high" is in here.

Q. Yes, unreasonably high.

A. Naturally it would follow that if a price is unreasonably high other mills would possibly find that market attractive.

Q. Even though that unreasonably high price were f. o. b. mill price?

A. What do you mean by f. o. b. mill price?

Q. A price made to turn over to the purchaser at the mill and for him to provide his own transportation in any way he likes.

A. That would depend upon the cost of the man to get his cement from the mill.

6178 Q. I am talking about the price you would make to him at the mill.

A. The other man's price is not made at the mill. It has to be some point where the two come together.

Q. Won't you even concede that an f. o. b. mill price is conceivable, that there is possible such a thing?

A. There is an f. o. b. mill price, but it doesnt mean anything.

Q. In the case of your mill base prices so far as they are effective, you said that all you get out of it is the mill base price?

A. That is true.

Q. Then I asked you why, if that were true, you did not sell it f. o. b. mill at that mill base price?

A. But you are talking here about a purchaser buying cement. He is not buying cement and using it at the mill where he is getting the f. o. b. mill price.

Q. Not the way you sell it.

A. Under any conditions he would not.

Q. If you did sell f .o. b. mill, if your f. o. b. mill price became unreasonably high, that would be an invitation for outside mills to come in?

A. It would depend upon the competition of the competing mill and the point at which the cement was going to

be used. That man would figure a price at the point
6179 of ultimate consumption; and if you figure his price unreasonably high at that point, that would invite competition.

Q. Regardless if it was sold f. o. b. mill or not?

A. But the comparison would be at the point where the cement was going to be used.

Q. Nevertheless, if the f. o. b. mill price were too high outside mill prices would be invited to come in?

A. F. O. B. price does not mean anything, not to the purchaser. What he is interested in is what it is going to cost him at the point he is going to use it, and that is where he is going to compare prices.

6180 Q. Mr. Neylan, you say the purchaser is interested only in the destination price. Here is the State of Illinois that wanted F. O. B. mill prices and you would not give it to them. Why not give it to those who wanted F. O. B. mill prices?

A. They did not want F. O. B. mill prices.

Q. Didn't they ask for it?

A. They asked for them, did not not want them.

Examiner Norwood: They merely thought they did?

The Witness: The proposal, as I recall it, very definitely stated that the prices would be compared with other factors taken into consideration, which indicated very clearly that they were not going to award on the basis of F. O. B. mill prices. What they were interested in was the price at destination.

By Mr. Wooden:

Q. Of course, every purchaser wants to know what it is going to cost him laid down where he wants to use it, but it is a different question what he wants to buy it at and where he wants to buy it. Do you think the Government in its now pending invitation for bids F. O. B. mill, really wants them F. O. B. mill?

A. They do not.

Q. They do not. Does that mean that you will not
6181 give them what they ask for because you know they do not want what they ask for?

A. I don't know what we will do.

Mr. Hershberger: Let me ask a question.

Isn't it true, Mr. Wooden, that in that invitation that you speak of, that there are some indications that the Gov-

ernmen intends to base its buying on a delivered cost rather than on an F. O. B. mill price?

Mr. Wooden: I don't know whether that is so or not. Everybody wants to know what it is going to cost him where he is going to use it.

By Mr. Wooden:

Q. Have you given the Government in the past F. O. B. mill prices when it asked for them?

A. We have given them both destination price and destination costs.

Q. Destination cost. But on an F. O. B. mill price?

A. Not as a straight F. O. B. mill price.

Examiner Norwood: You gave them a formula
6182 whereby they might figure out the mill price? Don't you?

The Witness: We do.

By Mr. Wooden:

Q. Well, didn't your company, in its booklet, Exhibit 1112, page 7, say that the Government would be quoted either F. O. B. mill or F. O. B. destination?

A. We did, at the time that booklet was issued.

Q. And didn't you then and haven't you since continued to sell railroads F. O. B. mill?

A. We do.

Q. You don't know where the cement is going there, do you?

A. No, we do not.

6183 By Mr. Wooden:

Q. Why do you make this exception in the case of railroads?

A. Because generally speaking the railroad company buys their material at f. o. b. mill for maintenance purposes, and they are using it all up and down the line. It would be a physical impossibility to quote those prices in all cases. In the case of the Canadian Government we know in all cases that the basis of the award is going to be the destination price, and we want our prices to be on an equal basis with the others.

Q. That is why you do it—because you want your prices to be on an equal basis with the others?

A. We know from past experience that that is where the government buys the cement. We want to have an op-

portunity for competing for that particular business at destination.

Q. And having your prices at destination the equivalent of all other prices at that destination?

A. Or lower. We have done that.

Q. But your booklet says you expect them to be identical.

A. We are going to try to make them identical if we possibly can. However, if we want business very badly, we may go a little bit better than identical.

Q. And that was done to a considerable extent in the industry, wasn't it, along in 1931 and 1932?

A. We did it, yes.

6184 Q. There has not been very much of it since 1933, has there?

A. Why, it is going on all the time.

Q. It is not done if your expectation and the method that is described in your booklet is followed.

A. The method described in the booklet has nothing to do with the practical case as we have to meet it from day to day.

Q. Wasn't the booklet based upon that? It says you do it every day, as a matter of fact. On the foreword of your booklet you say that it presents the facts, "as we live them in the daily operation of our business; there are no exceptions."

A. That is true so far as our company is concerned, or generally as our company is concerned, but we cannot make that booklet bind others.

Q. But you also say you expect and usually find the prices at destination are identical.

A. In our daily business that is generally true, but it is not true in all cases, however.

Q. Do you have other base point mills ship into the location of your mills immediately adjoining your mills?

A. We have competitors shipping into some of our towns adjacent to our mills, yes.

Q. Such as Norfolk, for instance?

A. To a small extent, yes.

6185 Q. Do you ship from your mills into the territory immediately adjacent to the mills of other companies?

A. If the price is attractive we would take some business there.

Q. Do you ship beyond the mills of other companies at times?

A. In some cases, yes.

Q. Do they sometimes come not only into your immediate mill territory but beyond it?

A. In one or two cases, yes. You cannot go very far beyond Norfolk or you would wind up in the Atlantic Ocean. You cannot go very far south of New Orleans before you run into the Gulf.

Q. What about Thomaston, Maine: Do you ship beyond that point?

A. Yes, we ship into northern Maine. We would like to ship more than we do.

Q. Do you ship in the immediate vicinity of Thomaston, Maine?

A. I don't recall that we do. We would take business there if it were offered to us.

Q. You quote in that territory, do you?

A. I do not know whether we do or not. I do not know whether there are any dealers in Thomaston.

6186 Q. Well, if it be true, as your booklet states on page 25, that your mill base price is unreasonably high, it is an invitation for the invasion of its nearby territory by competing mills, what do you say when you find that a number of your competing mills at considerable distances from Norfolk, ship and sell into Norfolk?

A. There is not anything we can do about it.

Q. I mean as to whether or not that indicates that your base price is unreasonably high?

A. We get approximately ninety to ninety-five per cent of the business in Norfolk.

Q. Yes, at your full mill net.

A. The same thing is true of New Orleans. We get the bulk of the business in New Orleans.

Q. Who are the competitive mills that ship into Norfolk?

A. There are a number of them.

Q. Will you name some of them?

A. The Lehigh does in some cases.

Q. Who else?

A. Alpha.

Q. Shipping from the Lehigh Valley?

A. Yes, a small amount; not much.

Q. Do you have some shipping into there from Virginia and Tennessee?

A. None from Tennessee that I know of.

6187 Q. You had bids on State business at Norfolk from the Tennessee mills?

A. I think that is true. I am not sure that Norfolk was the delivery point, however.

Q. Those State bids usually take County Seats throughout the State as the delivery points, don't they?

A. That is true.

6190 Q. Usually you get your mill base price in certain territory, which you described yesterday.

A. Yes, we usually get in certain territories, our full mill price, if you call it such.

Q. In other words, the price that you set, including these elements of cost and reasonable profit, is not interfered with by other mills who come into the same territory?

A. I wish I had the opportunity of having you in my office for about two weeks, Mr. Wooden, and I would change your viewpoint awfully fast.

Q. I am speaking not about exceptions, I am speaking about what you state in your booklet is the rule and usual course.

A. In that case, we will get pretty near every job in the territory which we cover, which is far from the fact, and every job we lose, our salesmen turn in reports that somebody has done something to the price. Now, price is made up of a lot of factors.

Q. Will you produce here some instances that will substantiate your claim on that?

A. I can.

Q. All right; we will be glad to have them.

A. How many do you want?

Q. The more you get, the better.

A. All right, sir.

6191 Q. The more you get, the better it will suit us.

A. That includes the cars of powder that people buy and everything else that influences the price.

Q. No. I mean a direct price cut.

A. A direct price cut, Mr. Wooden, is one of the few ways that prices are cut.

Q. I understand that too.

A. But nevertheless, a price cuts influences, regardless of what it is, it is still a price cut.

Q. I grant you that.

A. Anything that makes our proposition or the other man's proposition more attractive than ours, is a price cut.

Q. I want the cases, however—I don't mind having cases where it is an indirect price cutting, which goes on in the form that you describe—but I am particularly interested in the cases where the price is cut directly.

A. Well, you cannot get those. As a matter of fact, the law that we are operating under at the present times makes it absolutely impossible to get it, because it places a premium on dishonesty and secrecy.

Q. Then as I understand it, you can produce only the cases where it was some indirect form?

A. Where the buyer tells us that his proposition from the other man, either in price of some description,
6192 is more attractive than what we have to offer. That may be discount terms, it may be bag returns, it may be almost anything, I don't care.

Q. That would include, I take it, the giving of entertainment to customers that competitors did not give?

A. It might include baseball tickets, it might include fight tickets, or some other thing.

Q. Or even a more attractive calendar than a competitor gave?

A. No, I never heard of any jobs sold on calendars.

Q. There are all sort of ways, of course, in which the proposition from one competitor may be made more attractive than another, aside from the price itself?

A. It all enters into the price.

Q. It makes it more attractive?

A. He gets something—

Q. (Interrupting): That the other man does not give?

A. That the other man does not give.

6193 By Mr. Wooden:

Q. You had a number of rules, did you not, in the N. R. A. Code and in the Compendium that were directed against those forms of competition by giving more attractive terms of various kinds?

A. There was such a provision in the code.

Q. Weren't some of those provisions continued in the Compendium?

A. I believe it was mentioned in the Compendium, yes.

Q. I want it understood clearly, Mr. Neylan, that what I want you to bring in are cases where the price itself was cut.

A. You can't get that.

Q. Well, you mean you can't get the information?

A. We can get the changes, but we cannot get the proof.

Q. Oh, I see. Aren't the claims made accurately?

6194 A. In some instances, yes; in some instances we accept them to be the fact; but we cannot get them because the element of secrecy is so jealously guarded.

Q. I thought everything in the cement industry with regard to price was done openly, in the open?

A. You don't know anything about price cuts, then.

Q. That is, the publicity that is put out: that it is all done in the open.

A. Price cuts are not made in the open, any more than any other crime is committed in the open.

Q. I believe you said, Mr. Neylan, that you used the freight rate books of the Cement Institute in calculating your delivered prices?

A. We do.

Q. And also in calculating back from destination to ascertain the base prices of other mills?

A. We do.

Q. That enables you, does it not, to have your delivered price at any given destination the same as the delivered price there of other mills provided they use the correct base in connection with it?

A. In the first place, let me tell you that we find the quotations in the field, and if they are not informed of them to check back to any specified price, we assume that that is the price and we use the rate books for that purpose.

6195 Q. And in the territory where your base price prevails, if other mills use the Institute freight rate book and your base, they get the same delivered price that you make in that territory, don't they?

A. Yes; but they would get the same thing if they used the tariff.

Q. Are you sure of that?

A. Positive.

Q. Even when the fractions are dropped?

A. Fractions are not dropped.

Q. Isn't there a conversion table used that drops fractions below one-half and raises them above one-half?

A. That has been the practice not only in figuring cement rates, but you use the same practice when you are figuring your income tax.

Q. Nevertheless, unless it were done uniformly there

would be a possibility of a difference of as much as a cent a barrel in the delivered price?

A. I don't believe a cent a barrel; no.

Q. Even a fraction of a cent?

A. It would be—it would run out into a few fractions.

Q. And on a large purchase that would be enough to swing the business, wouldn't it?

A. I have never heard it questioned.

Q. But it would?

6196 A. I have never heard anybody raise that question. The customer never raises the question.

Q. What opportunity would he have to raise it?

A. He certainly knows what freight rates are. If he doesn't he certainly is not up on his job.

Q. What difference does it make to him what the freight rates are from the shipper mill, if it is not the base mill point?

A. Beyond the allowance for his freight, that is all.

Q. That is what he takes off the face of the invoice?

A. That is right.

Q. The actual freight?

A. That is right.

Q. Likewise, if you go into the territory where another mill's base price prevails, if you use that base price and the freight rate book of the Institute, you get the same delivered price that they do?

A. We would if they are using the same rate and and the same point.

Q. And it is from their base point?

A. Yes, it was from their base point.

Q. Haven't there been cases where the actual freight rates were changed but you did not change until that change was carried through into the Institute book?

A. Not that I know of; no.

6197 Q. Isn't the Institute book the basis on which you figure your prices delivered?

A. Normally, yes. Not in all places; in many of our places we do, but not in all places.

Q. Where the Institute book is applicable?

A. No, sir.

Q. What determines whether it shall be used in some places and not in others?

A. The size of our traffic department, whether we are able to take care of it more economically in our home

office than through the use of the rate books. In Texas, we have quite a traffic department, and while we use the Institute rate book there we actually check tariffs also.

Q. Does your traffic department make sales?

A. They are an adjunct of the sales department.

Q. But they don't actually make them themselves?

A. They do. The traffic manager very frequently calls on railroad companies and sells them cement.

Examiner Norwood: Do they quote prices?

The Witness: Yes. At the time of the price quotation we have the traffic department and the sales department working on it. They are all familiar with it.

Mr. Wooden: I offer at this time, your Honor, papers previously identified by Mr. Widman of the
6198 Commission's staff and marked 287-A, 287-D, 287-B, 287-C.

Examiner Norwood: A, B, C, and D?

Mr. Wooden: Yes. I arranged them in chronological order; that disturbs that numbering.

Examiner Norwood: Yes.

Mr. Wooden: These are copies that came from the files of Mr. Neylan or of his company, and I offer them at this time subject to whatever check that is necessary for any further authentication.

6199 Mr. Leisure: I have no objection to those exhibits, your Honor.

Examiner Norwood: Have you any objection, Mr. Zimmerman?

(COM. EX. 287-A, B, C and D was offered and received in evidence.)

Q. Showing you Commission's Exhibit 287-A to D inclusive, do you recall that correspondence, Mr. Neylan?

A. I recall it, yes, sir.

Q. Wasn't this a case where your company took a piece of business at the correct freight rate, which happened to be lower than the rate that was published at the time in the Institute Rate Book?

A. It is not.

Q. What is this reference then in Exhibit 287-A in which you tell your Norfolk Sales Manager, Mr. Fontaine, that you recalled a job taking delivery in Princess Anne County, and in connection with which the Norfolk & Southern Railroad applied a special rate, which resulted in a reduction at the destination price of about three cents a barrel?

A. That rate was not in effect at the time that job was taken. We could not check the rate as being actually
6200 in effect, we could not get Tariff authority or anything else. It was a mere statement made by an official of the Norfolk & Southern Railroad to one of our salesmen in the field.

Q. It was in effect when you shipped, wasn't it?

A. That he expected to reduce that price, but the contracts are taken long before shipments move.

Q. Was it in effect when the shipment was made?

A. It finally went into effect.

Q. It was shipped at that special rate, the lower rate?

A. It is possible that all of it was shipped, at that. There may have been some change afterwards, I am not sure. But that rate was not in effect at the time that we entered into that contract with that contractor.

Q. You criticised your Norfolk Sales Manager, didn't you, because he had used this special rate, rather than the Institute Rate Book?

A. It was not a rate. That is the only criticism that was directed toward him, that he used a rate that was not a rate. It was an indirect promise from the official of the company that they thought they would do it.

Q. And they did do it?

A. Yes, and that was the thing that got us the job.

Q. At any rate, you informed him that he should follow the freight rate compilations of the Institute?

A. I did not tell him anything of the kind. As
6201 I recall it, I told him that if he had any knowledge of a rate change, that he should report it to the Institute, and then use it.

Q. And not use it until it was reported to the Institute?

A. I told him as a matter of procedure, in order to keep our records straight, to report it to the Institute and then use it. I did not mean that he had to wait until the Institute issued freight rate notices, however.

Q. In other words, he could use it as soon as he reported it, and before it was published?

A. As soon as he reported it, he was absolutely at liberty to use it, and that is the procedure that we have followed in every part of the country.

Q. You told him, did you not, in Exhibit 287-A, "that the freight rate books are still the basis of our price com-

putations, and we have always followed the rule of utilizing only those rates which are published in those rate books.

A. Provided the rates are correct. They understand that and we understand it.

Q. Aren't there a lot of correction sheets that are issued from time to time?

A. That is true.

Q. On the Cement Institute Rate Book?

A. That is true.

6202 Q. And aren't many of those correction sheets, don't they carry the notice "Effective immediately?"

A. Some of them, yes, sir.

Q. Railroads cannot make their changes in rates effective immediately, can they?

A. That is because probably the Institute Rate Book had not been notified prior to the time the rate actually went into effect.

Q. You considered that you were under obligation to notify the Institute before using a changed rate?

A. I don't feel that I am under obligation to notify the Cement Institute of anything. I wanted that procedure followed in order to ensure the accuracy of that rate book, because we use that rate book, not alone for pricing, but for shipping.

Q. When you used it to calculate the delivered prices based on the other mill's base prices, you did not

6203 use it for shipping purposes there?

A. We use it for shipping purposes from our own mill if we get the business.

Q. But I asked you about when you are calculating the delivered price, based on the other mills' base prices?

A. The only time we can use it for shipping purposes is when we shipped. You certainly are not going to be called upon for shipping purposes from some other mill.

Q. All right. That answers my question. You were interested here in this instance in the freight rate books as based on your price computations?

A. We were interested in that particular instance in using an actual rate that was in effect at the time that we quoted our price, and that is the basis that we used at all times,—not some rate that somebody promises that he may or may not put into effect later on. That was the

instance in that particular case. We checked for days before we could even get a tariff reference on that particular change.

Q. But even though you had knowledge of a rate actually in effect, a lowered rate actually in effect, you would not, in line with your policy, use it until you had reported it to the Institute, would you?

A. We would use it the same day that we reported it, and that would be the day that we found it. The
6204 minute we report it, we consider that we are at liberty to use it, because that rate is in effect. We want that procedure followed in order to keep our books accurate and that is the only reason for it.

Q. Then why do you say in your letter that "You always pass along promptly to the Cement Institute, the knowledge of a change in the freight rates."?

A. Because when we report that rate to the Institute, we consider that that rate is in that book.

Q. As a matter of fact, it has not been published?

A. It is published, so far as we are concerned.

Q. It is not—it has not gone out to the rest of the industry?

A. I don't care about the rest of the industry; I am not interested in them. Particularly at Norfolk, I don't give two whoops what the industry thinks about it.

Q. You were interested somewhat in this instance, in the rest of the industry?

A. No, sir; I was interested in keeping our own company within the proper bounds, using rates that are actually in effect, and not something that is promised for some time in the future.

Q. Now, in your letter to Mr. Fontaine, dated November 11, 1936, Exhibit 287-B, you said, "The freight rate books are furnished to members of the industry as
6205 the official rate basis, and as such are accepted by the industry as showing the rates on which prices are based?"

A. The correct rates, as the official basis, as an official basis of rates.

Q. You were interested in getting a lower delivered price in this instance than your competitor?

A. Our Norfolk office was very much interested, and that is the reason they jumped the gun.

Q. And that is the reason you criticised them for it.

A. I criticised them for using a rate that was not
6206 in effect, and that was the only criticism.

Q. And making a lower delivered price than the rest?

A. That would naturally follow. But the job was ours, sewed up from the beginning. There was not any question about it. And that was the situation before he ever got the contract.

Q. You say you were not interested in what your competitors did in this case, or generally?

A. Not on that particular job, because the job was ours before he got it.

Q. In criticising Mr. Fontaine, you said this:

"The reason is perfectly obvious"—

that is, the use of the Institute rate book—

"as the official rate basis accepted by the industry containing the rates on which prices are based."

and you went on to say:

"The reason for this is perfectly obvious. To do otherwise would quickly result in a chaotic condition, due to local changes in rates which would be known to those companies most deeply concerned, and would probably be overlooked by the companies whose interests are not quite as great."

A. That is true, and that is a fact.

6208 Q. You did not have any criticism from any of your competitors, on your delivered price in this instance being lower?

A. Some competitors may have mentioned it to me later on, but I do not recall it.

Q. Who was that?

A. I don't recall. I said some competitor may have mentioned it to me, but I don't recall who it was.

Q. You have an idea that some competitor did?

A. Not at the time that those letters were written, no.

Q. How did your competitor discover that you had made this lowered delivered price at this point?

A. Talked to the contractor.

Q. And then talked to you about it?

A. I imagine that he would talk to the contrac-
6209 tor or talk to me. I don't know that a competitor talked to me about it. We have found some other quotations on a higher basis out in the field.

Q. Who were the other competitors bidding on that job?

A. Lehigh was one of them.
Q. Who else?
A. I don't know.
Q. Did you have any statement made to you by the Lehigh representatives about it?
A. I don't know. They probably may have mentioned it later on, yes.
Q. Who was it?
A. I don't recall.
Q. Did you have the matter mentioned to you by Lehigh or any other competitor prior to the time of this correspondence?
A. That is one of the things—the thing that brought that to a head was the fact that our Norfolk office had picked up a quotation from one of our competitors and sent it up to me. I was out of the office, as I recall it, at the time, and it was several days afterwards that it came to my attention.
Q. What was that quotation? Meeting this lowered price here?
A. No, it was on a higher price.
6210 Q. In other words, you then for the first time learned that you had made this lower price at this particular point?
A. That is true. They said in that case, as I recall it, that they had been promised by the Norfolk & Southern Railroad, that they had promised to give him the lower rate.
Q. Did the Lehigh or any other competitor bring the matter to your attention prior to the writing of these letters, Exhibits 287-A to D?
A. Not that I recall, no.
Q. You think it was afterwards, do you?
A. I think it was afterwards.
Q. What individual of the Lehigh?
A. I don't recall that it was the Lehigh.
Q. Was it anyone else?
A. I don't know.
6211 Q. As evidenced in Exhibit 287-D, Lehigh is mentioned quoting on this particular matter.
A. That was the quotation we picked up, as I recall it, but their quotation as I recall it was not at Diamond Springs, it was at Norfolk.
Q. What is the objection to making a lowered delivered

price on the basis of a lower freight rate than carried in the Institute book?

A. There is none, if the rate is a proper rate.

Q. You thought there was some objection here.

A. The rate was not a proper rate at the time the rate was quoted.

Q. But you got the advantage of it, didn't you?

A. Yes, but we don't want that kind of advantage. We have enough pride to compete on equal terms. We can sell our cement in competition with anybody.

Q. In other words, you considered making a lower delivered price on the basis of a lower freight rate than the Institute book, taking an advantage?

A. Under those conditions. I think it is a very unfair advantage that somebody has a veiled promise of reduction in rates; yes.

Q. According to 287-D, Mr. Fontaine's letter to you of October 23, 1936, he stated that the Institute freight rate bureau had issued a correction issued and dated July 6212 13, 1936, covering all points between Norfolk and Virginia Beach of a flat rate of 5 cents a hundred pounds, to meet truck competition. Then he says: "Diamond Springs is not listed on this particular notice, but the tariff reference Supplement No. 29 to Norfolk Southern Railroad Rate Issue No. 153 and Supplement No. 29 to V. C. C. No. 83, specifically makes this rate applicable to all points on the Electric Division of the Norfolk-Southern Railroad, Norfolk to Virginia Beach." He then says: "We therefore quoted on the above project a price on Lone Star $2.35 per barrel gross cloth."

Now, what do you say as to that in connection with your testimony that these rates have not actually gone into effect?

A. Diamond Springs was not shown on any tariff or anything else.

Q. He says that a certain supplement made the tariff applicable to Diamond Springs?

A. Diamond Springs was not even a delivery point, as I recall it.

Q. In your letter to Mr. Fontaine of November 11, 1936, Exhibit 287-B, you told him: "The freight rate bureau depends to a great extent upon the member companies to furnish them with information having to do with rate changes.

The rate bureau cannot be expected to maintain a
6213 close scrutiny over cement rates that is possible by members of the industry. On the other hand, freight rate books are furnished to member of the industry as the official rate basis and, as such, they are accepted by the industry as containing the rates on which are based prices."

Then you go on to refer to this chaotic condition if they did not do that. Do you mean by that chaotic condition a condition where prices at certain destinations would be not identical?

A. No, I mean by that that the rate book would carry a lot of rates that would not actually or were not actually shipping rates. In other words, we are closer to the situation on Norfolk than practically any of the other people in the industry or the rate book itself. We stay closer to it than they do; therefore if we get any notices of rate changes I thing it is our duty to correct that book so as to make it reflect the correct rates.

Q. Even if you get notice of a reduction that would enable you to make a lowered delivered price than your competitors, do you think you ought to notify your competitors so that they can make a lower delivered price?

Mr. Leisure: That is objected to.

Examiner Norwood: I think he may answer that, in view of statements previously made by the witness. Objection overruled.

6214 Read the question.

(The question is read.)

The Witness: If that notice is official, if there is not any question as to the application of the rates, then that rate can be used by us, and we will use it.

By Mr. Wooden:

Q. Yes, but not without notifying your competitors?

A. We do not notify our competitors.

Q. You notify the Institute?

A. We notify the Institute, and it is up to our competitors to look out for themselves from that time on.

6215 Q. Did you telegraph the Institute regarding changes in the freight rates that you already have?

A. Sometimes we do.

Q. And telephone them?

A. Sometimes—we have not telegraphed and we have used air mail.

Q., It depends upon the urgency with which the matter comes up, I suppose?

A. Not necessarily. We want the notice to get over as fast as we can, if the rate is in effect at the time we signed it.

Q. You say in your letter to Mr. Fontaine dated November 11, 1936, Exhibit 287-B that you have always worked on the policy that the freight rates shown on the rate books "are the only rates we will use. If we have any knowledge of any rates different from those in the rate books, then we have an obligation to inform the rate bureau of the new rate before such a rate is used in computing a price."

A. That is true, with this exception, that when we
6216 report a rate to the Institute, having an official basis, we consider that that rate is in the book. Our people understand that, and we understand it. Otherwise, I would have said in there that "you wait until the Institute sends their notice out."

Q. Otherwise?

A. If that were not understood.

6217 By Mr. Wooden:

6218 Q. You expect, I assume, when freight rate changes come to the notice of other companies, that you will get advice thereof through the Institute rate books, before that change is used in quoting prices?

A. I don't know that.

Q. I asked you what you expect?

A. I don't believe I have any reason to expect that.

Q. Your booklet says you have reason to expect that the prices at destination will be identical?

A. A. We will take care of that from the field quotations.

Q. You cannot do it afterwards, can you?

A. No, but we can check it pretty fast. All they have to do is to issue one quotation and we have got it.

6219 Q. Your booklet, Exhibit 1112, explains the identical delivered prices by saying that freight rates are known.

A. Generally are known.

Q. And they are known in this and other cases through the freight rate service of the Institute, is that right?

A. From the tariffs that we get. We check our own tariffs here.

Q. But in your correspondence, you said you used only the freight rate books of the Institute for pricing purposes?

A. For that particular mill. I said that that was the official rate notice, because they represent official rates, and that is the only thing I had in mind, and we are assuming that the prices that we quote are based on the correct rates.

Examiner Norwood: You check your tariffs when you pay the freight bills, do you not?

The Witness: At many of our offices, your Honor, we have a traffic man who has or who is on the mailing list of some of these railroads. They do send in supplements to the tariffs, and our men check them against the existing rates in the book, and if there is a change in there, we determine what it is, and if necessary we will report it to the freight rate bureau. We are paying for that service and we think we ought to keep it up all right.

6220 Q. What is the object of putting it into effect as soon as you report it and before your competitors have notice of it, if the purpose be to have the industry rely upon it?

A. That still makes the rate an official rate, and we have a perfect right to use it.

Q. You get the jump on your competitors then?

A. In that case we would.

Q. You cut the price of your competitors?

A. Oh, no; I don't cut any price at all.

Q. You get the lower delivered price, lower than your competitor?

A. But it is a right price, it is the correct price, and I can only assume that my competitors will find that, first by checking the quotation in the field, if they are close enough to the contractor to get the information, or getting it through a report from a change in the rate, either through the Institute rate book or through a tariff in their own case.

Q. Wouldn't that create the chaotic situation that you say in your correspondence should be avoided?

A. It should not.

Q. It should not?

A. No.

Q. Wouldn't it make your competitors meet that
6221 price and even possibly go one better?

A. I don't know; that is up to them.

Q. What was the chaotic situation in the industry that would result if you would not use the freight rate books of the Institute?

A. Oh, no; I did not say that. I said if the changes are not reported, you would have a lot of rates in there that would not help the actual rates in effect.

Q. And you would have a lot of delivered prices that would not be the same, wouldn't you?

A. Well, that probably would follow, but it would not be any hardship for us to meet it.

6224 Q. I am calling to your attention Exhibit 210-B, a letter written by Mr. Reigart, manager of the Bethlehem Freight Bureau of the Institute, to C. M. Roberts, traffic manager of the Volunteer Company at Knoxville, November 7th, 1936, about the time of this Virginia transaction, and in the course of that letter, Mr. Reigart 6225 makes the statement that the rate books show the lowest rate available to any given destination and are not intended for shipping purposes. Do you contend, nevertheless, that they are intended for shipping purposes?

A. I cannot help what Mr. Reigart says. We use them for shipping purposes.

Q. At least with the qualification that you named this morning, that you could not use them for shipping purposes when going into the territory of other base mills?

A. We have the freight rate that applies into those other mills. It is in the rate book, according to my recollection of it.

Q. But you do not price it when you go into the territory of other mills, on that basis, do you?

A. We meet the price that we find in there, but you have to make some freight allowance, and that is the shipping rate that you use.

Q. Well, when you say you use them for shipping purposes, you merely check the books with the allowance for freight made on the face of the invoice?

A. We actually ship on those rates. They have got the rates that are shown on the bills of lading that you tender to the railroad company.

6226 Q. Insofar as you do actually ship from a given mill, they are shown?

A. From our mill. We do not ship from anybody else's mill.

Q. Of course. But as you said in your correspondence on this Virginia transaction, the rate books are what are used for pricing purposes?

A. And for shipping purposes. In most instances they are the only rates we have.

Q. You did not mention the shipping purposes in your correspondence?

A. It was not necessary.

Q. Mr. Neylan, showing you Exhibit 1003-A, did you ever see that before or know at the time that it was written at the time?

A. Witnesses examines.) I do not recall ever having seen that letter. That was written out of the Virginia office.

Q. Well, it was a notice, was it not, to the Freight Rate Bureau at Bethlehem?

A. But it is dated in November, 1936, considerably after the other correspondence.

6227 Q. Not so much after some of it?

A. After the original letter that brought the subject up.

Q. The first letter is dated October 15, then there is one November 11, and one November 23.

A. And this is November 20?

Q. Yes. Referring again to this same exhibit 1003-A, would you not agree that they used the actually correct rate in the matter but were simply reporting to the bureau that they had failed to report it?

A. Not at the time they used it; no, sir.

Q. Did you suggest to Mr. Fontaine or the Norfolk office that they make a report on the matter to the Freight Rate Bureau?

A. I did not suggest to them that they make a report on that matter, but told them to check the rate in if that was the correct rate. I believe that is in the other correspondence.

Q. You think there is something erroneous about the statements in 1003-A? If so, what?

A. It is not in accordance with the facts. In other words, at the time the quotation was issued, the original quotation was issued to the contractor, the Norfolk Southern Railroad had not made that rate applicable to that particular station, because the station did not exist as a station.

6228 Q. But the Norfolk & Southern did inform your representative that they would apply that reduced rate to all stations on a certain division, didn't they?

A. This is long after that original statement was made. The original statement was made to one of our salesmen that they thought they would do it, but it was not official.

Q. Did you then receive from the Institute, a correction sheet in regular form stating that this one station was included in the reduced rate?

A. I don't recall that. The book would speak for itself.

Q. Do you recall, Mr. Neylan, the conditions back in 1931 when cement prices were somewhat chaotic and being cut substantially?

A. I passed through it.

Q. You remember it then, I suppose?

A. Rather hazily. It moved so fast, I don't believe anybody could get a lasting particular in particular detail.

6229 Q. Was there not a period of about a year then, at that time, when mill rate prices were very drastically reduced?

A. There was a period there when your destination prices were reduced very drastically.

Q. Were not the mill rate prices also drastically reduced?

A. I assume they were, to a great extent.

Q. Were they not reduced at many mill base points, as much as fifty cents or more a barrel?

A. Yes, some of ours were reduced—I won't say within that period, however. I would not confine it to that period.

Q. Were there some reductions, say, running into 1932, that went even higher than fifty cents a barrel?

A. Well, I would not want to say that it ran over fifty cents a barrel. It was a substantial reduction, however. Checking on recollection, principally.

Q. Showing you a paper marked for identification 1114-A and B, it purports to be a list of basing points and prices as of January 1st, 1931, and between then and June 30th, 1931. With that to refresh your recollection, could you say whether or not that does represent the range and extent of the reductions made in base prices during that six months period?

6230 The Witness: This refreshes my recollection to this extent, that there were drastic reductions in the price, but I cannot say that this document is actually correct.

By Mr. Wooden:

Q. I do not ask you to vouch for the accuracy of every figure on there; I am just asking in a general way whether that represents any correspondence with your idea as to the extent of the reductions?

A. I remember during that period there were some reductions in the price, but I cannot say whether this is actually the fact or not.

Q. I am not asking you to, but whether or not you see anything in those figures that you would say does not correspond to your recollection of the situation?

A. Well, you can appreciate that I cannot keep all of these figures in my head for the period of 1931 to 1938 or 1939.

6231 Q. I appreciate that; but that was an outstanding period, wasn't it, in your experience in the industry?

A. Yes, to a certain extent.

Q. You never had anything like it before or since, have you?

A. Well, there were some hectic periods.

EVERETTE MACINTYRE was recalled as a witness, and testified further as follows:

Direction Examination by Mr. Wooden.

Q. Mr. MacIntyre, showing you paper marked Commission's Exhibit 1114-A and B for identification, will you state what you know about it?

A. This is a list of basing point prices that was furnished to me by Mr. Callery, an official, an employee, of the International Cement Corporation or the Lone Star Cement Company of Virginia, which was a subsidiary of the International Cement Corporation at that time, in the Tower Building, 14th and K Streets, Washington, D. C. It was furnished to me August 4, 1933. It was furnished to me by Mr. Callery after I had made a request for

6232 the list, and he secured the list from his New York office, that is, the office of Mr. Neylan and Mr. Koch.

Mr. Leisure: Now, I submit that counsel cannot testify where he secured it from. He can testify as to what he got.

Q. Handwriting at the top, reading "List of basing point prices"—do you know whose that is?

A. That is in my handwriting.

Mr. Wooden: I offer the document, with the hand-
6233 writing excluded.

Mr. Leisure: May I ask Mr. MacIntyre a question?

Examiner Norwood: Yes, certainly.

By Mr. Leisure:

Q. Who was the man you got this from, do you say?

A. Mr. Callery, an official of the Lone Star Cement Company of Virginia.

Q. What was it you asked him for? Did you ask for a list of basing points?

A. A list of basing points and basing point prices, and he told me—

Q. (Interposing): He said he would make one up for you; is that it?

A. He told me he would have to secure the list from the New York office, that he did not have it there in Washington.

Q. Was he an officer or an official of that company?

A. He was in charge of the Washington Office on that day. I don't believe that he was regularly in charge of the office, but he was on that occasion.

Q. How do you know he was in charge of the office?

A. He told me so. I asked for the man in charge, and he told me he was in charge on that particular occasion, that there was nobody else there.

6234 Q. You don't know what his position was with the company, do you?

A. He told me he was with the sales department, and on that date he was in charge of the Washington Office. I had understood that there was someone else in charge, but he told me on that occasion that he was the only one there.

Q. And then he subsequently submitted this to you, did he?

A. I don't clearly recall whether he telephoned Mr. Neylan or I sent him there, but I am under the—as I recollect the circumstances, he did telephone New York, either at that time or during the day, because I called him back before the close of the day and he told me that I would be able to get the information, that he had discussed

it with New York, and I either secured it the next morning or within one or two days thereafter.

Mr. Leisure: I submit, your Honor, that this should not be admitted, except with respect to the Lone Star Company.

Examiner Norwood: Have you any objection, Mr. Zimmerman?

Mr. Zimmerman: Merely to join in Mr. Leisure's objection.

6235 Examiner Norwood: I shall admit it to be used against the others, if it is connected up, the same as all of this other testimony. Received and marked.

(COM. EX. 1114-A and 1114-B was offered and received in evidence.)

JOHN F. NEYLAN, previously sworn, resumed the stand and testifies further as follows:

Direct Examination (Continued) by Mr. Wooden.

6238 Q. Was there some secret price cutting going on?

A. There is always secret price cutting.

Q. Was there an unusual amount of it gong on then?

6239 A. I don't know that there was any more then than there is right now.

6242 Q. There was some price cutting on large State contracts at that time, wasn't there?

A. There always have been.

6245 Q. Do you recall writing any letters to a Michigan concern giving them the benefit of your views and experience regarding trucking?

A. Yes, sir; one.

Q. Who were they?

A. The Aetna Company.

Q. Any others?

A. That is all.

Q. You don't recall writing any to Huron?

A. Well, it was Huron, instead of Aetna. I beg your pardon.

Q. About Aetna, you mean?

A. No. I want to correct that. The one letter I recall was to Cree, who I believe was with Aetna. That

6246 is all I recall.

Q. Do you recall writing any to Mr. Rooney or Huron?
A. Not that I recall.
Q. How did you happen to get interested in the trucking situation in Michigan?
A. Well, it is quite a while back. My recollection is that Mr. Struckman, who was then president of the company, asked me to write my views on trucking, and it was sent to him, as I recall it.
6247 Q. To what extent were you selling in Michigan?
A. Very little.
Q. Then I ask what business interests of yours were served by writing letters about trucking in Michigan?
A. I don't know. I merely did what I was told.
Q. Well, didn't you discontinue trucking at your mills because of the disturbing influence trucking had upon the delivered price structure?
A. We found that trucking injured our business.
Q. Injured your business by disturbing and making uncertain the delivered prices?
A. Injured our business in many respects.
Q. In that respect.
A. Not necessarily, no.
Q. Not necessarily. Do you recall writing anything to that effect?
A. Yes, I do. That is not the only reason for it at all.
6250 Q. Showing you papers marked for identification, Commission's Exhibit 1115-A and B, will you identify them as copies of notices put out to your trade in July and in August, 1932, discontinuing trucking at your mills or some of your mills, rather (handing paper to the witness)?
A. (Examining papers): I will.
Q. Is that Mr. Fontaine's handwriting on one of those?
A. Yes, it looks like it.
Mr. Wooden: I will offer those two documents in evidence.
6250-A Mr. Leisure: No objection, your Honor.
(COM. EX. 1115-A and B was offered and received in evidence.)
6251 Q. Would not any mill that would have discontinued trucking without its competitors doing so, been at a disadvantage?
A. No.
Q. By that much?

A. No. Will—

Q. (Interposing) Will you explain your answer?

A. We could discontinue trucking at Norfolk without being at a disadvantage with respect to anybody. We could do the same thing in New Orleans. We could probably do the same thing at Lyondale.

Q. I was referring primarily to the Hudson territory. Wouldn't any mill have been at a disadvantage there if it discontinued trucking, without the others doing it?

6252 A. Only on a certain class of business. Only on one class of business.

Q. What was that?

A. Probably on road work, when the work was close to the mill.

Q. Did you discontinue trucking at your Lehigh Valley mill?

A. We did.

Q. About what time?

A. My recollection is, about the same time.

Q. In August of 1932?

A. We never did a terrible lot of trucking in the Lehigh Valley, our company.

Q. Some mills did?

A. Yes, I think they did.

Q. Who were the ones that did most of the trucking?

A. I don't know. They were not concerned very much with trucking in the Lehigh Valley. We didn't pay much attention to it. As a matter of fact, we never attempted to meet it.

Q. Did Allentown and Valley Forge do considerable trucking?

6253 A. Yes, they trucked.

Q. Did the Edison, from Lehigh Valley into New York?

A. I don't recall that; no.

6254 Q. Showing you papers marked "Commission's Exhibit 1116-A and B for Identification," and purporting to be a circular letter from your sales manager M. J. Spring, at Indianapolis, Ind.: "To all Representatives" dated January 6th, 1932, will you identify that as an authentic copy of an original document from the Indiana company's files (handing paper to witness)?

A. (Witness examining paper) Well, it is a copy of a letter signed by M. J. Spring, and we have such a man

in our Indianapolis office. I don't recall that I ever saw it before, however.

Q. Did your various subsidiary corporations at that time forward to your headquarters, copies of documents that were selected from their files by representatives of the commission?

A. I think they did; yes, I think they did.

Q. Do you have any doubt or question that this 6255 is an authentic copy of one of such papers?

Mr. Leisure: Whether he has a doubt or not is not material. May we see it?

The Witness: It is there. I will accept it as such.

Mr. Leisure: Subject to check as to authenticity, your Honor, we have no objection.

(COM. EX. 1116-A and 1116-B was offered and received in evidence.)

Q. Do you convert freight rates per hundredweight into barrel rates by multiplying by 3.8?

A. Yes, we convert from 100 pounds into a price per barrel.

Q. By multiplying by 3.8?

A. Yes.

Q. I note here in this exhibit Mr. Spring refers to the conversion table and states that "You will note that all of the old rates from 8½ cents up are advanced full four cents per barrel." Will you check my calculation and see whether or not an eight and a half cent rate translated into a barrel rate, what it comes to?

A. 3.8 cents?

Q. 8½ cents by 3.8. Will you tell me if I am wrong, that it comes to 3.23?

6256 A. 32.3.

Q. It is 3.23, isn't it?

A. No, 32.3.

Q. I now understand, Mr. Neylan, this advance of full 4 cents per barrel is the amount of the increase, and not the amount of the rate itself, so that accounts for it. I was thinking it was 3.23 instead of 4, so we will not pursue that line of questioning any further.

I notice in this exhibit, 1116-A that no prices have been issued which will result in a net at Limedale of less than 80 cents a barrel after deducting freight, sacks and cash discount. Was that about the lowest net that you went to during the 1931-1932 period?

A. May I see that letter, please?

Q. Surely. (Handing paper to witness.)

A. That is right. That was our absolute minimum.

Q. Was that the minimum at all of your mills or just at the Limedale mill?

A. Just at that particular mill, according to my recollection.

6257 Q. Was the lowest point your base point reached at any of your mills?

A. I really do not recall. I would have to refresh my memory.

Q. Do you think it went lower than 80 cents at any place?

A. I don't think so.

Q. Do you think it went any lower than that of Bonner Springs?

A. I think at Bonner Springs we placed a limit on their sales too about the same time.

Q. How much?

A. I don't recall exactly what the minimum was, but I do recall that at those two mills we did specify a minimum.

Q. Was the Bonner Springs minimum lower than this 80 cents?

A. I don't think so.

Q. As I understand it now, you have no factor that comes to your mind as entering into those low mill base prices at that time other than State contract bidding?

A. I remember there was some State contract bidding at that time, but whether or not that contributed to it, of course, I cannot say definitely.

Q. You bid on those State contracts, didn't you?

A. In some instances, yes.

Q. Did you find that there was some price cutting on them?

A. There was some low pricing.

6258 Q. Were there some prices that were made at delivery points that were lower than other prices made by others?

A. It is my recollection that that is right.

Q. Were you among those that made those lower prices?

A. I don't recall that we were. I don't recall of any business that we got on it.

Q. Who were the leading examples of the mills that made lower prices on those State contracts than other mills did?

A. I don't know definitely. You can check it by the awards. That is evidence of itself.

Q. You did check it at that time, didn't you?

A. Yes, we did; but that is 1931; that is a long time ago.

Q. You have no further recollection of who those were?

A. No, I have not.

Q. When the next invitation for bids came up after such instance, was the price further cut?

A. Well, after what instance? I don't know, on that general line of questioning. I really cannot answer that kind of question.

Q. You spoke of instances where the prices were cut on State contracts.

A. Yes, but I cannot define it to 1931 or 1932; it went on for a number of years.

Q. You mean prior to that?

A. Yes, my recollection is that there was some 6259 prior to that time.

Q. But was not 1931 and 1932 the big examples of that sort of thing? Wasn't it more pronounced in those years than at any other time?

A. Probably the prices got lower in those years, if that is what you mean.

Q. Would you agree from that, that the extent to which the prices went lower indicated that it was a more pronounced condition?

A. Not necessarily. Whether the prices were lower, whether they were cut a lot or a little, it is still low, it is still the same situation.

Q. Ordinarily a mill that wants to cut prices does not cut it very much in order to get the business, does it?

A. Sometimes he does, sometimes he does not.

Q. It is not necessary to cut very much, is it? One cent a barrel would do it?

A. In some cases, yes.

Q. On large orders, wouldn't even a fraction of a cent do it?

A. Yes, where a man is buying on price.

Q. And the States are buying on price, aren't they?

A. To a great extent they were, yes.

Q. Now, did base prices increase at your various mills during 1932?

6260 A. In some mills, yes.

Q. Did prices, base prices of other mills increase in 1932?

A. Some of them did not; some of them probably did.

Q. Was the Marquette Company among those mills which made lower prices on State invitations about that time?

A. I recall a low bid, my recollection is, in the State of Illinois.

Q. By Marquette?

A. Yes.

Q. And you recall one by Aetna on the State of Indiana, I believe?

A. I don't know about the time, however, in that State.

Q. Were there any others that come to your mind as making lower prices on State bids?

A. Not at that particular time, no.

Q. Were the conditions of supply and demand in the cement industry in 1932 better or worse than they were in 1931?

A. Probably worse.

Q. I take it you mean by that that the demand for cement was lower?

A. Probably so.

Q. And I assume also that you had corresponding increases in the supply available?

A. Well, the potential supply, possibly; I do not know whether the actual supply was increased; I do not

6261 know definitely.

Q. Did you reduce production?

A. I think we did at that time. Our company did.

6262 Q. Who in your company made the decision to raise the prices in 1932?

A. I don't know.

6263 Q. You got your instructions from someone to do it, didn't you?

A. I got part of my instructions, and part of my instructions, as I recall it, were given direct.

Q. From whom? Instructions direct from whom?

A. Part of it, as I recall, was handled through me by instructions from the Vice President in charge of sales.

Q. Mr. Koch?

A. Yes.

Q. Can you say in what territory or at what mills of your company the price was first increased in 1932?

A. My recollection is that we increased our price at Bonner Springs, in 1932. That is recollection.

Q. And then after that, where?

A. Then after that we had to drop back, because the other mills locally at that point did not meet it. As a matter of fact, they lowered it further.

Q. Did you later get it up?

A. I believe in 1933.

6264 Q. At that time, at any rate, the others met it?

A. I think in the early part of 1933, in March, if I am not mistaken, we advanced our price.

Q. And it failed to hold then?

A. And that did not stick.

Q. Ordinarily, are you glad to meet a price advance made by your competitors?

A. It depends on the circumstances.

Q. I say "ordinarily"?

A. Well, I cannot say ordinarily. Whether I should like to meet it or not has no bearing on the situation. That is again decided as a matter of policy, and again my opinion may be asked, but not necessarily followed.

Q. Based on your experience with what your company has done has it been glad and willing to meet a price advance made by others?

A. In some instances they have met price advances; in other instances they have not.

Q. Who took the lead in advancing base prices in 1932?

A. My recollection is that in the Kansas district, I think we put it up, but it did not stick. That is my recollection of it.

Q. Was there a territory out there in which Marquette first put it up?

A. I do not recall.

6265 Q. I mean in the Middlewest Section?

A. I don't recall that.

Q. Showing you papers marked "Commission's Exhibit 1117-A to D for Identification," purporting to be notices to your representatives, issued by your sales manager M.

J. Spring in July, 1932, will you identify those as copies of authentic papers from your files, if I tell you that they were obtained by a representative of the Commission?

A. (Examining papers) I think so.

The Witness: I think I recall having seen a copy of the ditto ones, but I do not recall having seen the other ones.

Mr. Leisure: Subject to check as to the correctness—these are typewritten copies, we have no objection.

(COM. EX. 1117-A and B was offered and received 6266 in evidence.)

Q. I notice from these two papers, Mr. Neylan, that on July 13th, 1932, the base price at Marquette or Cape Girardeau was $1.25. On July 21st, 1932, the base price at Marquette or Cape Girardeau was $1.65, an increase of 40 cents in the course of one week's time.

A. May I see that, please?

Q. Yes. (Handing paper to witness).

A. (Witness examining paper) That seems to be correct.

Q. Where, among the list of base points on these two exhibits, did the Lone Star have mills?

A. Limedale, Indiana, on this one (indicating) and Limedale, Indiana on this one (indicating).

Q. You had only one mill represented on both of these exhibits?

A. That is right.

Q. And it appears that on July 13th your Limedale base was $1.50 and on July 21st it was $1.65, an increase of fifteen cents per barrel. Was that a case where your company moved its price upward at the mill base by fifteen cents because others were increasing their mill base prices?

A. I really don't know. I don't know whether we advanced our price first or whether somebody else ad-
6267 vanced and we put our price up afterwards.

Q. Do you sell pretty widely over Illinois?

A. Yes, the eastern portion. We do not go very far—there is an area in the northwest that we do not get into.

Q. Do you sell in the territory where the LaSalle base price prevails?

A. In some instances, yes, sir.

6271 New York, N. Y.,
Thursday, May 12th, 1938,

6273 JOHN F. NEYLAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wcoden.

6279 Examiner Norwood: You follow the lead of the others?

The Witness: No, not in our own territotry. We would have a price at almost any point, unless we found a price that was lower.

By Mr. Wooden:

Q. I was not seeking to make any point of any difference or similarity between the prices made to the State and the price made to dealers at some points, but in the territory where your base price does not prevail, is your method of determining the delivered price, to apply the lowest sum of the base price plus freight to that destination?

A. I thought I told you that we applied in all cases the simple procedure of first figuring our own price, and then comparing that with the prices that we found from other sources.

6280 Q. And if the delivered price from other sources is lower than yours, then you use that?

A. We use it if we want the business on that basis.

Q. And isn't that an affirmative answer to my question, that you use the lowest sum of the base price, plus the freight?

A. Well, that is not true in all cases, no, sir; there are some prices that we have to meet in the field that we cannot actually determine definitely how they are made.

Q. Those are non-basing point mills?

A. Not necessarily. There may be some price put in by somebody for some purpose or other—I don't know what it is—but if we find that price, it is either a case of meeting it or not.

6283 The witness identified Com. Ex. 1118 A, B and C as letters from his concern to representatives of the Federal Trade Commission, transmitting certain basing point price information.

Examination by Mr. Leisure.

The witness said in identifying the letters he means that he recognizes the signature and letterhead. As to the first letter he recognizes Mr. Koch's signature. As to the enclosure in the second letter, the witness does not re-
6284 call having seen it before. Offhand he does not know who prepared it, but after examining the paper referred to, he said it was prepared in "our" office.

(COM. EX. 1118-A, B and C was offered and received in evidence.)

Q. Referring to Commission's Exhibit 1118-A, Mr. Neylan, I notice that the statement is made that at the Lehigh Valley plant the base point price was increased from $1.61 to $1.80 per barrel effective August 3, 1932, an increase of 19 cents; and at your Hudson mill the same date it was increased from $1.61 to $1.90; that is 19 cents in the case of the first and 29 cents in the case of the Hudson mill. Would you say as a sales manager what the conditions of supply and demand were at that time, in August of 1932, that warranted and enabled you to get an increase in price to that extent?

A. I don't know.

Q. I notice that apparently prior to that date the Hudson base price and the Lehigh Valley price were both the same, instead of the usual 10 cents differential above the Lehigh Valley in favor of Hudson, and at this date that differential of 10 cents was restored, making it Hudson 10 cents above Lehigh Valley. Can you say why that was done?

6285 A. I cannot.

Q. Can you suggest any conditions of supply and demand which enabled you to raise the price at that time by such a substantial amount?

A. I cannot.

Mr. Leisure: Your Honor, I think the record is already clear that this witness does not have anything to do with those things.

Examiner Norwood: He said so. Yes.

Mr. Wooden: Well if the sales manager does not have anything to do with them or is not supposed to have any knowledge of those conditions, it does not seem to me that they need a sales manager, it seems to me they need an office boy.

Mr. Leisure: He does not need to be an economist. He does not set the prices. He sells the goods at the prices set, the same as in any other business.

The witness after examining the paper does not recall ever having seen Com. Exs. 1119 A and B which purport to be copies of a letter by the vice president of Lone Star of Pennsylvania to Mr. Koch, his vice president at
6286 New York, dated September 6, 1929. Mr. McBride
6287 was one of the officers of the Pennsylvania Lone Star at one time. The witness does not know whether Mr. McBride was an officer in 1929 and said that would have to be checked with the record.

The witness said the document is apparently not signed and that he could not say that he ever saw "the writing on the side" before. He really does not know whether or not that is Mr. Jessup's handwriting. One portion of it might be, the other does not look like it at all. Mr. Jessup
6288 is "our" chief file clerk.

Mr. Leisure: Mr. Wooden, did you delete the fifth paragraph because it did not pertain to the general subject matter in the letter?

Mr. Wooden: No, I deleted it in my offer, because it is immaterial.

Mr. Leisure: I am rather inclined to agree with that. I think the whole letter is.

Examiner Norwood: Then you are together on paragraph 5. Have you any objection?

Mr. Leisure: We have no objection to the letter.

Examiner Norwood: The document marked Exhibit 1119-A and B, consisting of one letter, is received in evidence, all of the contents thereof except paragraph 5.

(COM. EX. 1119-A and B was offered and received in evidence.)

6291 (COM EX. 1120-A was offered and received in evidence.)

6292 By Mr. Wooden:

Q. In this Commission's Exhibit 1120-A, Mr. Neyhan, you make reference to a telegram apparently—is that one of your salesmen, Frank Page?

A. Frank Page, Jr., isn't it?

Q. Yes. Was he one of your salesmen?

A. He was at that time.

6293 Q. You went on to say, after quoting the telegram: "Action of this character on the part of field

representatives is oftentimes misinterpreted and very often leads to lack of confidence, not only on the part of the dealer but our competitors as well." Wherein would the sending of such a telegram lead to lack of confidence on the part of your competitors?

A. I was not particularly interested in my competitors.

Q. I am directing your attention to what you said, and asking you to explain wherein your competitors would lessen their confidence in you by reason of such a telegram.

A. My principal object there was to preserve the integrity of a young and inexperienced salesman.

Q. Yes.

A. And to stop him from having the onus of a rumor monger saddled on him.

6294 Q. All well and good, but I am still asking you wherein such a telegram would lead to lack of confidence on the part of your competitors, as you said in the letter?

A. I don't know why I said that in the letter.

Q. I have read it to you. Do you want to look at it?

A. I saw it.

Q. Do you mean to say that you don't know that you said that in the letter?

A. I said that in the letter. There is no question about that, but I don't know why, at this time, it was said. As a matter of fact, I cannot see any reason now for having said it.

Q. And you cannot explain now why it was said?

A. I probably could not explain it then.

Q. Showing you now Exhibit 1120-B for Identification, will you identify it as a copy of a letter received by you from Mr. Callery, dated January 17th, 1931?

A. (Examining letter) I will.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: We have no objection.

Examiner Norwood: Mr. Zimmerman?

6295 Mr. Zimmerman: I am sure that I have not.

Examiner Norwood: Received as marked.

(COM. EX. 1120-B was offered and received in evidence.)

Q. Referring to Exhibit 1120-B, Mr. Neylan, it appears therefrom that Lehigh had put in a price at Roslyn, Virginia of $2.53 delivered, as against a price that you were quoting there of $2.66, and the report was made to

you by Mr. Callery that other companies had not yet met that competitive situation. I thought it was imperative that when a decline was put into effect at a given destination, that all companies immediately had to meet it?

A. That is up to the companies.

Q. Or forego the business?

A. They definitely forewent the business in that case.

Q. Did they later meet it?

A. I don't know.

Q. Did you later meet it?

A. We met it.

6297 Q. Showing you a paper marked 1120-C for identification, will you identify it as a copy of a letter written by you to your Kansas City office April 4, 1931?

A. I will.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: We have no objection.

Mr. Zimmerman: No objection.

(COM. EX. 1120-C was offered and received in evidence.)

Q. Is the price in Washington the sum of the Norfolk base price plus rail freight to Washington?

A. It is not.

Q. What is it made up of?

A. It is made up of our price base at Norfolk mill net —actual mill net, if you want to call it such—plus

6298 our estimated cost of moving it to the Washington market.

Q. By water?

A. By water.

Q. How are the prices in towns immediately around Washington made?

A. They are made with regard to the Washington market.

Q. You mean that the Washington price plus freight from Washington is used?

A. Plus what we estimate would be the cost of moving the cement out of Washington into that adjacent territory.

Q. Estimated by what method of transportation?

A. The usual method of transportation there, by truck or any other method that they may employ.

Q. It is not based upon the Washington price plus the rail method of transportation?

A. Not necessarily.

Q. Can't you be a little more definite about that. You say "not necessarily." As a matter of fact, the
6299 price in towns near Washington is not the sum of your Washington price plus rail freight, is it?

A. There are a few if any rail rates, as I recall it, in effect at Washington. I do not know of any place where the price is made on Washington with using the rail freight.

6300 Q. So all of those points that you refer to around Washington are made on Washington, using an estimated truck transportation?

A. An estimated cost of moving cement out of there. That is purely an estimate on our part. It is our price, incidentally.

Q. Do you deliver in your own truck?

A. We do not.

Q. Does the dealer send his own trucks to Washington?

A. Not in all cases. In many cases he takes the cement by car from Norfolk or from some other place.

Q. Does he take it by car and get the price delivered the same as though he took it by truck?

A. I don't know whether he does or not.

Q. That would be rather important to you, wouldn't it?

A. No, it is of no importance to us.

Q. You ordinarily sell delivered on the basis of the railroad delivered cost, do you not?

A. Well, here is one case in Washington where we do not, for instance. That is what we are talking about.

Q. When you say in Washington, you mean in the Washington territory?

A. In the City of Washington. Now, any dealer outside of Washington is privileged to come into Washington and we will deliver cement to him at our warehouse.

6301 Q. In his truck?

A. In his truck. Now, what happens to that after he leaves that warehouse is something that he is concerned with alone. On the other hand, if he wants to buy a carload at the destination price at any station contiguous to Washington, we will sell him a carload and probably ship it from Norfolk.

6308 Q. Showing you a paper marked Commission's Exhibit 1121-A for identification, will you identify it or accept it as a copy of a circular issued by your sales manager, M. J. Spring, to the sales representatives of your company, May 24, 1932?

A. I cannot say that I have ever seen it before.

Mr. Wooden: I offer it, subject to check.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: No objection.

Mr. Smith: No objection.

Examiner Norwood: Received as marked.

6309 Q. I show you papers marked Exhibit 1121-B to E inclusive. Will you identify those as copies from the files of your organization?

A. (Examining papers) They look like letters that came out of our office.

Mr. Wooden: I offer them, subject to check.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

6310 Q. Now, showing you papers marked for identification 1121-F to I inclusive, will you identify them as copies of papers from the files of your organization?

A. (Examining papers) They look all right, but I would want them checked.

Mr. Wooden: I offer them subject to check.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

6311 Q. Did you take the initiative, or did your concern take the initiative in any of these increased prices that were being put into effect about this time, along in June or July, 1932, or were you just following what others were doing?

A. I really don't know.

Q. In Exhibit 1121-F, your sales manager, B. G. W.—was that Mr. Wallace?

A. That was Mr. Wallace.

Q. At Kansas City?

A. That is right.

Q. Where you say that "in accordance with your telegraphic instructions, we have canvassed our trade on the basis of $1.75 gross in cloth, Bonner Springs, Ada and Iola, $1.25 La Salle." What does that expression mean, "Canvassed our trade on the basis of $1.75?"

A. Issued quotations, canvas quotations or spot quotations as they call them, to dealers, using those figures.

Q. Is that done when you initiate a change in price yourself, or is it done also when you find that others have initiated the change?

A. We do it at times other than prices changes up or down.

6312 Q. Sort of a feeler to see what the reaction is?

A. No. We look on any indication of that kind as being somewhat equivalent to a call on a salesman. We want to keep our name before the trade.

Q. It is in the nature of an offer, isn't it, for a price?

A. Yes, that is it.

Q. And it does not go into effect for five days before the offer is made, that is, the advance, if it should be an advance, is not effective until five days after notice?

A. Our company gives five days' notice of a price change.

6314 Q. When other base mills issue canvas quotations containing an advance, do you ascertain that from picking up the quotations from the field and figuring it back to the base to see whether there was an advance or not?

A. Yes, we can check from the quotations we get.

6316 Q. When you put out a notice of advance five days in the future, effective five days in the future, and you do not find that the other mills meet the advance, then you have to go back to your old price?

A. We do.

Q. If, however, you find through picking up their quotations, that they too are announcing the advance, effective five days in the future, then you can proceed

6317 with confidence that the advance will be effective?

A. We will allow the advance to remain there if the company so decides, yes.

Q. What is the difference between that arrangement and the five day waiting period that you had under the NRA Code?

A. I don't know.

Q. Can you point out any essential difference?

A. So far as our company is concerned, we have always, as long as I can recall, given five days' notice of a price advance.

Now, the five day waiting period in the Code, whether that is the result of that or not, I don't know. I had nothing to do with the formation of the Code.

Q. You were on the Code Authority?
A. But I had nothing to do with the Code itself.
Q. When you make a declining price, do you make it retroactive for five days?
A. That is true.
Q. How long has that been true?
A. We have always followed more or less that same procedure, as long as I have been in the business.
Q. On a five day basis?
A. Sometimes we would go five days and sometimes we would go more than that.
6318 Q. How recently have you gone more than five days?
A. I don't recall offhand.
Q. Have you gone more than five days since the NRA Code?
A. In some cases, yes, under certain circumstances.
Q. What is the reason for making your decline retroactive five days?
A. In the first place, one of the reasons is to try to be fair with your trade. That is the essential feature of it, so far as our company is concerned, and that is the basis on which they made their adjustments over all of the period of time they have been in business,—trying to be fair with the people that are doing business with them.
Q. Without holding out any obligation to make the decline retroactive, they merely voluntarily make it retroactive?
A. That was the basis on which it was originally made, a voluntary proposition.
Q. So that you could do it if and when you cared to, but you were not obligated to do it?
A. We obligated ourselves to the point of telling the trade that we would make those adjustments. Normally, it was on the basis of cement that had been shipped prior to the price advance and was in transit or was only constructively placed.
6320 A. We are not limited to five days at the present time. I want to bring that out very clearly. While normally five days is the period that we run, there are circumstances that would make it possible and warrant it going back ten days and fifteen days, if necessary.
6322 Q. I am now showing you papers marked for identification 1121-J to 1121-Q inclusive. Will you iden-

tify them as copies of papers from the files of your organization?

6323 Mr. Leisure: We have no objection to those.

(COM. EX. 1121-A to 1121-Q inclusive was offered and received in evidence.)

Q. Following the advances made in the summer of of 1932, these exhibits, Commission's Exhibit 1121-J, K and L, describe further price increases made in December of that year, do they not?

A. Witness examines.) They apparently do.

Q. Was there any improvement in the conditions of supply and demand in December of 1932, compared with the summer of 1932?

A. I don't know.

Q. This price advance of December, 1932, mark the end of basing points existing at certain points in Ohio?

A. I really do not know.

Q. I notice in Exhibit 1121-L that after stating the base price at Toledo and Cleveland the note says:

6324 "The Toledo and Cleveland bases are to be used for Ohio points only." Do you know why those bases at Toledo and Cleveland were restricted to Ohio points only?

A. I do not.

Q. Referring to Exhibit 1121-N, your circular to your subsidiaries, December 12, 1932, you state that: "The base prices at Michigan have not yet been reported to us, but we do know that the Michigan base prices do not apply outside of the State of Michigan." How did you know that?

A. I never found them outside of the State of Michigan.

Q. Did you find them up to the line?

A. We do not do much business in Michigan. It would not be a fair comparison or a fair statement for me to make. Michigan is far removed from any of our plants.

Q. In Exhibit 1121-O you describe the arrangements or the price conditions at Buffalo, stating that an arrangement similar to that in effect at Cleveland was in effect, and you describe how carload prices were arrived at in the two counties. Will you state how you got your information about the way those prices were arrived at in those counties?

A. By checking the quotations that came to us.

6325 Q. Does that enable you to learn in what counties the price conditions applied to, and beyond which they do not apply?

A. Why, certainly it does.

Q. Do you get your information about truck deliveries and prices of truck deliveries in the same way?

A. You can find that out from any dealer in Cleveland, Buffalo or Toledo, that you ask, at any time. He has the quotations from all the local mills.

6326 Q. Showing you Exhibit 1121-R and S for identification, will you identify it as a copy of a circular issued by you on April 1st, 1931?

A. (Examining papers): That is all right.

Mr. Wooden: I offer it for the record.

Mr. Leisure: No objection.

(COM. EX. 1121-R and S was offered and received in evidence.)

Q. Mr. Neylan, with regard to your statement yesterday that you used the freight rate books of the Institute, both for pricing and for shipping purposes, can you use books for shipping purposes that do not contain information as to the various routes by which shipments may be made?

A. Certainly.

Q. In case there are two routes between the same points, that makes no difference to you?

A. I don't know of any place where the through rate would not apply with equal force, regardless of the route. Occasionally you do run into some difficulty, however,

6327 Q. Will you state what you mean by using the freight rate books for shipping purposes?

A. The rates as shown in the rate book are actually the rates that we place in our bills of lading and the rates at which the railroad company bills the freight.

Q. Do you have to supplement it from your own records, other records in order to do so?

A. Not necessarily, no.

Q. I call your attention to the testimony of Mr. Reiter, George Reiter, on that question, at page 4015 of the record, where he says shipping books must have routes:

"By Mr. Wooden:

"Q. Must have what?

"A. The routes, the name of the railroads over which the rate applies. These books can be used as shipping books by the addition of this route information.

"Q. But that would have to be supplemented by the company's own information?

"A. Yes."

Do you take issue with Mr. Reiter's testimony on that subject?

A. I don't know what Mr. Reiter is referring to. I am telling you what we do. I know what I am talking about, because I have checked it.

Q. You are talking about the freight rate books
6328 of the Institute.

A. I know what I am talking about when I make the statement, Mr. Wooden, because I actually checked the procedure that we follow, and that is the procedure.

Q. You don't care to take issue with Mr. Reiter's testimony at all?

A. Except that I do not agree with him so far as our company is concerned, based on actual knowledge of what we do. You certainly don't need a route to ship freight from Hudson to Utica on the New York Central, and get a great big route book to find out how it is going to move.

Examiner Norwood: Then the freight rates are always the same between two points where there are two lines connecting those two points and so on?

The Witness: Based on my experience, I would say generally so; there may be exceptons, however, but as a general proposition a shipment arising by one railroad for delivery on another is usually switched at the delivery point with the final delivering lines, the initial line absorbing the switching of that particular carrier.

By Mr. Wooden:

Q. But in the event there is a difference in the rate between two given points by different routes, you have to know them, don't you?

6329 A. You do not. All you have to do is to put the name of your originating railroad and the final delivery on your bill of lading, and the rest of it will take care of itself.

Q. Well, there are exceptions, as I understand it, where the rates between given points are not the same by different routes?

A. Very few that I know of. I cannot recall any right now. The only difference there may be is to the extent of absorption of some switching which would be a very small item.

6330 Q. Have you found that at times, when you put those rates on the bills of lading, that the railroad would change the rates?

A. In isolated cases, yes. As a matter of fact, in checking with our people, we find in more instances than one the railroad company questioning our rates is actually wrong,—that the rates that we put in there are actaully the correct rates.

Q. But there are some cases where they do change your rates?

A. In a very, very few number of cases.

Q. To that extent then, when you rely on the freight rates for shipping purposes, they are in error?

A. Not necessarily. What do you mean by "In error"? Do you mean that the rate book is in error?

Q. Yes.

A. And I have seen cases where the tariff actually was in error.

Q. Yes, but some times the railroad changes the rate and it is correct, isn't it?

A. Yes, that is true.

Q. Do you have a traffic manager at each mill?

A. Not at each mill, no.

Q. Do you have a traffic manager at each branch office?

6331 A. We have a man that carries the title of traffic manager. As a general rule, he is nothing but an adjunct to the sales department. His traffic work does not amount to but very little.

Q. Is he, in fact, a rate clerk?

A. Well, probably eighty per cent—seventy-five to eighty per cent of his time is spent on sales work.

Q. You mean figuring out the delivered prices?

A. Doing routine work in the office.

Q. Well, does that routine work consist of figuring out delivered prices?

A. Not necessarily. Any work that is incidental to the sales department.

Q. Does it include figuring out delivered prices?

A. He will check some delivered prices, yes, but we try to keep a running record of our prices in the territory that we are operating in.

Q. Don't you have to figure each individual freight bill?

A. No; that is done in the accounting department—the freights. The freight item is handled usually that way.

Q. That is what I meant. Somewhere in your organization they have to figure each individual freight bill?

A. Well, they have to figure the price extensions, and

everything else when they are figuring an invoice. Quite naturally we would carry on that as part of the routine work.

6332 Q. Don't they have to calculate the actual freight rate from your mill to destination?

A. That is, the freight rate that we show is the actual freight rate.

Q. Don't they have to calculate it out of the freight tariffs on to the freight bill?

A. No, sir.

Q. In no case?

A. No, sir; not that I know of.

Q. Even where you are shipping into the territory where another base price prevails?

A. Not from our mill, no. After all, we are only concerned with the freight from our mill that we are shipping from.

Q. Yes.

A. And we carry that. That is shown in the freight book and it is usually correct.

Q. I show you papers marked Exhibits for identification 1122-A to G inclusive, and ask you if you will identify them as copies of correspondence from the files of your organization. I think most of them, if not all, you were a party to the correspondence.

6333 A. They look all right.

Mr. Wooden: I will offer them, subject to any further check that may be desired.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

(COM. EX. 1122-A to 1122-G was offered and received in evidence.)

Q. Referring to Commission's Exhibit 1122-D you asked your Mr. Pierson at Indianapolis to confirm the rumor that you had heard that the base price at Saginaw, Michigan, had been reduced 10 cents a barrel but applicable only within the State of Michigan; and in Commission's Exhibit 1122-E Mr. Pierson replies stating that he had interrogated some of the dealers in Michigan and found out that it did apply only within the State of Michigan. There was a case, was it not, where you had information from some source other than dealers that that price reduction was applicable only within the State of Michigan?

A. It is possible. I don't recall the circumstances. But

we are not interested in the State of Michigan, except as it affects the territory of our own mill.

Q. If it were not applicable or confined to the State
6334 of Michigan then it would be of a matter of interest in your territory?

A. Absolutely.

Q. And the same thing was true as to the Wyandotte base.

A. If we had picked it up in our own territory, we would not be relying on what came to us by round about methods.

Q. In Commission's Exhibit 1122-B, you wrote your Indianapolis saying: "The application of the Wyandotte Michigan base, as we understand it, was heretofore confined to the State of Michigan. Apparently the Michigan mills are now permitting base to go wherever it will." How long had it been the case that the Wyandotte, Michigan mill was confined within the State of Michigan?

A. I really don't know.

Q. Do you recall any of the circumstances that led to it being extended beyond the State of Michigan?

A. No, I do not.

Q. Do you recall anything about the Aetna Company extending it in Indiana on any Indiana State bids?

A. I remember the company's bid, but I don't connect it particularly with those dates. We are not concerned with the State of Michigan.

6335 Q. You said here in this exhibit 1122-B that you understood there was some question as to what base
6336 applied within the State of Michigan, and that "the base generally is considered at $1.70 gross in cloth, but due to trucking conditions in and around Detroit, we have heard that some mills are observing $1.60 gross cloth in Michigan and $1.70 gross cloth elsewhere. In other words, there seems to be some misunderstanding as to the trucking situation, which accounts for the apparent misunderstanding of the application of the Wyandotte base." What was the trucking situation that you refer to there?

A. I don't know particularly. I don't know what trucking arrangement was in effect at that particular time.

Q. You referred to it as a misunderstanding as to the trucking situation.

A. Our misunderstanding. We did not even know what it was. We were interested, however, in the application of the base. We were trying to get some information to de-

termine whether or not it affected us. Beyond that, we had absolutely no interest in it. We are not interested in the State of Michigan; we never travelled a salesman in the State, to my knowledge.

Q. How did the trucking situation affect the application of the Wyandotte base?

A. As to whether it was $1.70 or $1.60, it would affect it, if it came across the line. We wanted to know whether
6337 it was $1.70 or $1.60. Wyandotte is pretty close to the Indiana state line.

Q. And would the $1.60 be the trucking or the $1.70?

A. I really don't know. As a matter of fact, you could not even find that out from reading that letter, because I did not know it then and I do not know it now.

Q. Was there some effort at that time to make the price to truck higher than the price delivered otherwise?

A. I don't know as to the particular date, no.

The witness identified Com. Ex. 1123 A to D as copies of correspondence from the files of his organization. After examining the papers, he said they looked all right.

Examination by Mr. Leisure.

The witness said that the initials B. G. W. in Com. Ex. 1123 B referred to Ben Wallace.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1123-A, B, C and D was offered and received in evidence.)

6339 Q. Referring to Commission's Exhibit 1123-A, your Mr. Koch informed your Indiana vice president, Mr. Pierson:

"We understand that the making of deliveries to trucks at mills in the Ohio-Indiana sector has been discontinued by many of your competitors. Naturally, to be consistent in practice and to avoid the pitfalls of the past, we are anxious that you meet this competition and give due written notice to the trade affected. It was our understanding from the conversation that the notices now out are effective October 22nd."

Do you know what the "pitfalls of the past" were
6340 that Mr. Koch was referring to?

A. I do not.

Examiner Norwood: What was the date of that letter?

Mr. Wooden: October 15th, 1932.

By Mr. Wooden:

Q. Do you have no pitfalls in mind that you can refer to in connection with the matter of trucking?

A. I don't know what pitfalls he was referring to.

Q. No. I am asking you.

A. Would you mind repeating that question?

Examiner Norwood: Read it.

(The question is read by the reporter.)

The Witness: No. I have not. I am not in a position to pass on his letter.

By Mr. Wooden:

Q. I don't ask you to pass on his letter, but out of your own experience to speak regarding pitfalls in regard to trucking.

A. Not in connection with this letter; no.

Examiner Norwood: He is asking you if you know what he means.

The Witness: No, I do not.

By Mr. Wooden:

Q. Do you mean to say you never encountered any-
6341 thing in connection with something that you would characterize as pitfalls?

A. I may have, yes.

Q. All right. I am trying to get you to state what they were.

A. I don't care to make any statement on that. I do not think it has any bearing on this.

Mr. Leisure: He is asking him to interpret the phraseology used by that letter.

Examiner Norwood: No. He is asking him to state what he knows.

Mr. Leisure: There are pitfalls and pitfalls. They may not be the same pitfalls.

Mr. Wooden: I didn't say they were.

Mr. Leisure: The witness did not say anything about pitfalls.

Mr. Wooden: Yes, he did.

Mr. Leisure: The letter refers to one state of pitfalls; the witness may be referring to another. Mr. Wooden may be referring to another.

Mr. Wooden: I want the witness to state about the pitfalls he says he has encountered.

Examiner Norwood: I am going to instruct the witness to answer the question, whether he cares to or
6342 whether he does not.

Mr. Leisure: I submit that that question cannot be intelligently answered, because it covers trucking over the entire United States, and no time is specified. The first part of the question was directed to what the witness meant, and then counsel says, "Do you mean to say you never had trucking difficulties?" The witness did not say he never had trucking difficulties; he said in the beginning that he could not account for what the author of the letter meant when he talked about trucking difficulties.

Examiner Norwood: No. The question is directed to his experience and his understanding of what was meant by pitfalls or what were these pitfalls that he had encountered. Clearly, counsel for the Commission has a right to an answer.

Mr. Leisure: If that is the question, I think he will get a direct answer, but frankly I do not understand the question.

Examiner Norwood: Will you answer the question as I have just explained it?

The Witness: In other words, to explain some of the pitfalls, that I may look upon as pitfalls?

Examiner Norwood: As having resulted from trucking?

6343 The Witness: The principal one that stands out in my mind is the constant difficulty with our dealer trade with our customers.

By Mr. Wooden:

Q. What sort of dealers?
A. All of them.
Q. What sort of difficulties?
A. They did not want it.
Q. Why didn't they want it?
A. I don't know.
Q. Do you mean to say you never even undertook to find out why they did not want it?
A. They would come to us and tell us they do not look upon trucking with favor and they proceeded to back that up by not giving us business.
Q. Some of the dealer associations took that attitude, did they?

A. I don't recall any dealer associations that ever appealed to us on that basis.

Q. Some individual dealers liked trucking, didn't they?

A. We had a few individual dealers that liked trucking if we would confine it to them.

Q. Weren't there some that liked it regardless of whether you confined it to them?

A. A very very small percentage of them might.

6344 You never heard of those, though, you only heard from those that were penalizing you for doing it.

Q. Penalizing you for doing it?

A. Yes.

Q. In what way did they penalize you?

A. By not giving us business.

Q. Was that rather widespread?

A. That is one of the things that hurt us the most.

Q. Was that one of the reasons that you understood from your dealers as to why they did not want it was because it enabled some dealers to undersell other dealers?

A. Will you have that question again?

(The question is read.)

The Witness: I don't know that that was ever put to us that way. It was put to us on the ground that it injured their business. How, I don't know.

Q. Do you mean to say it was never put to you in substance as I put it, without regard to the words I used?

A. Not that I recall.

Mr. Wooden: Your Honor, I am offering at this time Exhibit 289-C and E previously identified, I believe, by Mr. Widman, as a copy of a paper coming from the files of Mr. Neylan, consisting of a letter from Blaine Smith of the Pennsylvania-Dixie Corporation, to Professor Burns, dated July 3rd, 1935. That has been checked

6345 to see if it duplicated any among the pending Clark and Burns' exhibits, and I am informed that it does not duplicate any of those.

Examiner Norwood: Is there any objection?

Mr. Leisure: Yes, your Honor. We have already objected to this Burns and Clark material as being incompetent, immaterial and irrelevant, and as privileged communications. I will make the same objections we have heretofore made.

6346 Examiner Norwood: There is no objection made as to identification, or anything like that?

Mr. Leisure: No, not as far as the fact that Mr. Smith wrote the letter. In fact part of our objection is based upon the fact that it is a confidential communication.

(COM. EX. 289-D, C and E was offered and received in evidence.)

6348 Q. Appropos of your testimony a few moments ago, about the effect of trucking upon dealers, and the dealers' objections to trucking, and my effort to ascertain whether the dealers' objections were not based in part upon the effects of trucking upon price competition amongst the dealers, I direct your attention to what Mr. Blaine Smith says here, in Commission's Exhibit 289-D:

"Trucking of cement is a complicated matter. The conditions necessitating or warranting prices for deliveries to buyers' trucks at the mill above the base price are numerous and vary as among the different mills, and those you mention are among them. However, it is a doubtful statement that deliveries to buyers' trucks at the mill or deliveries at destination by trucks controlled by the seller have a tendency to undermine the basing point system in general. Use of the truck in the cement business has an effect, not on the so-called basing point system, but on the cost to different customers at destination. The manufacturer, when delivery is by truck, cannot protect the markets of its many customers. The buyer located in one market area will make deliveries in another market area that he does not usually serve, and cause a disruption of marketing conditions as between the

6349 manufacturer's customers. The difference in the cost of delivery by truck was partly due either to the method of figuring used by the buyer on his own trucks, or to the rates quoted by different independent truck operators on the same movement or even to different rates by the same independent truck operator to two or more buyers on the same movement. Also in many cases there was a difference in the cost of delivery by trucks, vs. railroad cars, due to the difference in the unloading expense at the warehouse or point of use. Also a smaller investment in cement is required in the handling of the smaller quantities by truck than in the larger quantities by railroad car. Because of your familiarity with the cement business, you realize that cement, being a standardized product, must be sold to all customers of the same class at the same place at the same time at the

same or substantially the same price, when on account of trucking different prices prevail under those conditions, it reacted on the manufacturer. Customers were dissatisfied and critical."

6350 By Mr. Wooden:

Q. Do you have any different view of the effect of trucking cement upon price competition among the dealers than Mr. Smith expressed here?

A. But let me say, however—

Q. (Interrupting) Will you answer me first, and then you can say what you please? Do you have and different view than Mr. Smith?

A. I won't quarrel with what is stated as to the situation there, but let me make one point clear, however. That was not your original question; your original question to me was, did any dealers complain to me about the price of cement being upset or something of that sort, because of trucking, and I said, "Not to the best of my knowledge and belief," I believe.

Q. Well, sometimes when I say "You" I really mean your company or your organization. That may account for it.

A. Because I do not have contact with the trade as a general proposition.

Q. Did it come to you in the course of your connection with your organization?

A. Yes, there were many complaints from our customers; for many and varied reasons.

Q. Including the ones here stated by Mr. Smith?

A. Probably among those reasons.

6351 Q. Mr. Smith in what I read to you set forth a number of apparently economic advantages in the use of trucks, such as the smaller investment, and he mentions the delivery to the job and things of that sort, but there are some economic advantages in the use of trucks for cement delivery, aren't there?

A. There may be to a few people that can work it out that way, yes.

Q. Do you think that because it could not be made available to everyone that it should be withheld from those who could use it advantageously?

A. I believe, however, that if—

Q. (Interrupting) Will you answer that question, first, before you say you believe?

A. May I have the question?

Mr. Leisure: It is the kind of a question that can only be answered by stating his view. He started to state his belief, but I do not think his belief is material or relevant in this case.

Examiner Norwood: I shall ask him to answer the question.

The Witness: May I have the question read?

(The question is repeated.)

The Witness: I believe if it hurts more than it helps, it should be withheld.

6352 By Mr. Wooden:

Q. And did you believe it hurts more than it helps?

A. I believe that it did.

Q. I noticed Mr. Smith in his letter, Exhibit 289-D, says that these conditions of different prices on account of trucking made customers dissatisfied and critical and reacted on the manufacturer. Do you agree with that also?

A. I certainly do.

Q. Did it tend to upset the manufacturer's prices to the dealers?

A. It tended to upset our whole method of marketing and had an effect on the consumption of cement in many instances.

6359 Q. I am showing you Exhibit 1103-A, another tabulation by our Mr. White, and refer you to Warrentown and Marshall. Would you agree that $1.60 Northampton was the base used in bidding at those points?

6360 Q. Is the Northampton base price $1.60?

A. It is not.

Q. What is it?

A. $1.65.

Q. What was it in 1937, June, 1937?

A. $1.65, so far as I know.

6361 Mr. Leisure: In order not to have the record incorrect, do you want to withdraw that exhibit, Mr. Wooden, Exhibit 1104?

Mr. Wooden: No, I do not wish to withdraw it.

6368 (COM. EX. 1124-A to G, inclusive, was offered and received in evidence.)

6369 New York City, N. Y.
Friday, May 13th, 1938

6370 EVERETT MacINTYRE was recalled as a witness and testified as follows:

Direct Examination by Mr. Wooden.

Q. Mr. MacIntyre, I show you papers marked Commission's Exhibit for identification 1125-A to 1125-I inclusive. Will you state what you know about them?

A. The papers marked for identification Commission's Exhibit 1125-A to 1125-I inclusive are tabulations of basing point price and explanations of prices which were furnished to me by Mr. Koch and Mr. Neylan of the International Cement Corporation, 342 Madison Avenue, New York, on July 8, 1931, partly in response to a questionnaire that had been submitted to that company by the Federal Trade Commission and partly in response to questions that I propounded to those informants at that time.

Q. Will you state just in a general way what the
6371 papers comprehend, the type of information?

A. They contain a list of basing points and basing point prices, with changes in such basing point prices over a period ending in the early part of 1931. It will probably be necessary to examine each one of these and determine just what period is covered.

Mr. Leisure: I want to ask the witness that is on the stand when Mr. MacIntyre is finished, some questions before we pass on these.

Mr. Wooden: Very well. I am through with Mr. MacIntyre.

6372 JOHN F. NEYLAN, previously duly sworn, resumed the stand and testified further as follows:

By Mr. Leisure:

Q. Mr. Neylan, this exhibit, sheets 1125-A to D which Mr. MacIntyre has just identified, how were these made up?

A. These sheets are merely the gathering together of the information that comes to our office almost constantly

from our division offices, and so on, and it was put on one sheet, that is, it was put on a series of sheets over a period of time, taking the old records that we had and so on, and consolidating it in this form.

Q. And did you check them in any way as to correctness so that you know they are correct?

A. Only against the record that we had. There is absolutely no assurance that all of those prices on there are correct at any time.

Q. But it does show the dates at which you received those prices?

A. Or the dates that our divisions reported them to us, they having picked up information in the field that would lead to that conclusion.

Q. As I understood from Mr. McIntyre, those are the records of the International Cement Company, were they?

A. They were the records that were compiled in our
6373 office. At that time it was known as the International Cement Corporation, I believe.

Examiner Norwood: Is this information that you acted on after you received it?

The Witness: Some of it, your Honor, we have, but there are many points in here that we simply got as a matter of information from any number of sources that we were not even the least bit interested in.

Examiner Norwood: Did you consider them reliable sources?

The Witness: Well, some of it that we certainly would not consider it reliable, to this extent, that, for instance, here on here is Trident, Montana,—something that we never come in contact with.

Mr. Wooden: In other words, that was not in your sales territory?

The Witness: No.

Mr. Wooden: For that reason, would you say that
6374 it was unreliable? It was the best information that you could get, wasn't it?

The Witness: It was the best information we had.

6376 Mr. Wooden: Your Honor, the witness' testimony has been that they pick up this information in the field as their only source of knowledge as to what the basing point prices of other mills were and that when they picked them up and figured them back they then concluded that those were the basing point prices and thereafter they

accepted them as such; and that is just the situation here; these are accepted and relied upon by the Lone Star companies.

And let me add there that at the time these papers were prepared information was collected from various subsidiaries of the International which were then called Lone Star companies under various States.

Examiner Norwood: I think that they are admissible.

Mr. Smith: May I ask a question?

Examiner Norwood: Yes.

Mr. Smith: The dates you have there, Mr. Neylan, are the dates that the information came to you?

The Witness: In the first place, let me say this: that this was not prepared for the Federal Trade Commission. I take issue with that statement.

Mr. Wooden: I didn't so state myself. I don't think I did.

By Mr. Wooden:

Q. Will you state the circumstances under which
6377 it was prepared.

A. It was prepared merely as our own office record. I do not believe any of our divisions ever had a copy of this. Therefore, our business, our current day to day business, was not conducted on the basis of this sheet.

Q. Was it prepared before Mr. McIntyre requested the statement?

A. Oh, yes.

6378 (COM. EX. 1125-A to 1125-I was offered and received in evidence.)

6382 Mr. Wooden: Your Honor, I offer for the record at this time exhibits previously identified by Mr. Widman, of the Commission's staff as copies obtained from the files of the Lone Star Company, and marked as follows:

284-G-L-I-J-K-H-D-E-F and U.

6385 Examiner Norwood: It is addressed to "Members
6386 of the Cement Institute, and it purports to come from six members of this Committee.

(COM. EX. 284-D, E, F, G, H, I, J, K, L, U, and V was offered and received in evidence.)

6387 Q. Referring to these exhibits, Mr. Neylan, can you explain why they were in the files of the Lone Star Company?

A. I never saw them before, Mr. Wooden.

6389 Q. I am showing you, Mr. Neylan, a series of papers marked for identification 1126-A to 1126-H inclusive. Will you identify them as copies of correspondence and documents from the files of your organization? They relate to this Iowa Highway Commission bid that I asked you about.

A. I will.

Mr. Wooden: I offer them in evidence.

6391 Mr. Leisure: Your Honor, I object to this series of exhibits being admitted in evidence as binding upon any of the other respondents. This is a transaction between the Lone Star Company and certain representatives of the State of Iowa, and I object to it being received as binding on any of the other respondents, and as immaterial, incompetent and irrelevant as to them.

Examiner Norwood: Has Mr. Zimmerman seen these?

Mr. Zimmerman: Yes, I have. I think that objection covers the point that I would raise for Marquette.

6392 (COM. EX. 1126-A to H was offered and received in evidence.)

Q. This transaction, Mr. Neylan, involved the bids on 1,000,000 barrels for the State of Iowa, I believe?

A. I believe that is true.

Q. Delivered at various points throughout the State. I notice in your letter to Mr. Koch of November 17, 1931 about this bidding, that you stated that the net to your Kansas subsidiary ranges from 71 to 75 cents and was therefore fairly attractive. Was that lower than your average net?

A. I don't know, at that time.

Q. You informed Mr. Koch that you thought the only thing to do was for Kansas—you mean your Kansas subsidiary—

A. (Interposing) Yes.

Q. To bid their regular list price. Now, according to Exhibit 1126-D, E and F, a letter from your sales manager Robinson—was he in charge at the Kansas City office?

A. He was not; he was sales manager.

Q. What was his position?

A. Sales manager.

6394 Q. Referring to Exhibit 1126-C, being your letter to Mr. Lehaney, at your Kansas City office, does that refresh your recollection as to the question I asked you?

A. (Witness examining paper) Well, I wouldn't say

that that would indicate that we criticized him because he quoted less than our competitors. It is a criticism because he violated our instructions.

Q. To quote your regular price?

A. To quote our regular price; and he didn't do it.

Q. And if he had done it, it would have been the same as your competitors, even at Fort Dodge?

A. As we know it at the time, yes.

Q. Who was Mr. Lehaney?

A. He was the local manager at Kansas City.

Q. Did Mr. Lehaney withdraw the bid made by your organization at Fort Dodge?

A. I believe eventually he did.

Q. Did he first attempt to correct the error?

A. I think he did.

Q. Was that refused by the Iowa Commission?

A. My recollection is that it was?

Q. Did he then withdraw the entire bid for all
6395 points in the State?

A. I think that is true.

Q. Why would you withdraw the bids at all other points in the State where your destination prices were the same as your competitors, just because you happened to be low at one point by four cents?

A. I really do not know.

Q. Did Mr. Lehaney act in that matter without your knowledge or approval?

A. He might have. He might have gotten his instructions from somebody else in the New York office.

Q. Do you know whether he did or not?

A. I really do not know.

6396 Examiner Norwood: Why did you say you wanted to withdraw the low bid? Was it too low to be profitable?

The Witness: I don't recall it sufficiently, your Honor, to make a definite statement on that. My recollection is that at the time Mr. Koch was away. I think the correspondence shows that I wrote him in Kansas City and asked his opinion, and when the thing came in, I probably referred it to our officers in the company and was told to either change it or take it out. What was in their minds, I don't know. I would not have the authority to tell him to take it out.

By Mr. Wooden:

Q. Naturally, he would not, without instructions from someone higher than you, isn't that so?

A. That is generally true.

Q. As a matter of fact, your salesmen have no discretion to vary a price at any time, have they?

A. No.

Q. What discretion do you have in that matter?

A. Only in so far as I can check that that is our price at that point.

Q. After checking it, you then do not feel that you have the discretion to vary it?

6397 A. In isolated cases, yes, I have that discretion. I can tell them, "Well, go ahead and put that in," and I would report that matter to our own people.

Q. Here was an isolated case, but you did not feel that you had the authority to do it?

A. My position at that time was different even than it is now. At that time I did not have as much authority as I have now.

Q. Rather than allow your price at Fort Dodge to be four cents lower than your competitors, your organization was willing to forego the chance it had to get any of that 1,000,000 barrel order, is that right?

Mr. Leisure: There is no testimony to that effect; in fact, the testimony is to the opposite effect, that that was not the reason for doing it at all.

Mr. Wooden: He has not given any testimony to the opposite effect?

Mr. Leisure: Yes, it was to the opposite effect.

Mr. Wooden: He said he did not know.

Mr. Leisure: He said the reason was because he did not sell according to their quoted price. That very question was asked in different phraseology and he denied it.

Examiner Norwood: Well, possibly the witness 6398 can answer this question, it will throw further light on it. Objection overruled.

The Witness: May I have the question?

(The question is repeated by the reporter.)

Examiner Norwood: You can explain that fully if you wish.

The Witness: Well, in the first place the bid was a violation of our instructions.

By Mr. Wooden:

Q. By accident? A clerical error, wasn't it?

A. It may have been a clerical error, yes, sir.

Q. Don't the reports show that it was a clerical error?

A. Apparently that is what they laid it to, so that when the thing was reported to us, I took it up with our people and I was instructed to either have it changed or take it out. That is as far as I can recall.

Q. You could not get it changed, so you sacrificed your chance to get any part of the million barrel order?

A. He simply followed the instructions he got, and if he could not change it, then he was told to take the whole works out.

Q. Would your average selling expense exceed five cents per barrel?

A. Our average selling expense would naturally vary with the district that you are referring to.

6399 Q. I am asking you your average expense, whether it would exceed five cents pe. barrel for average selling expense?

A. Well, will you give me a better idea of what you mean by "selling expense?"

A. Total sales expense is what I mean.

A. Over all, it probably—well, it would vary according to years.

Q. That particular year, 1931.

A. I have absolutely no recollection of what our selling expense was.

Q. Has your selling expense ever been as low as five cents a barrel?

A. Average?

Q. Yes.

A. I don't think so.

Q. And here in Iowa, where you had a mistaken low price of four cents, you had no selling expense at all to worry about after the transaction was closed; you had already sold to those people?

A. It was never sold.

Q. Well, I mean if you got the award, it was sold.

A. We never had any reason to believe we would get an award.

Q. Not even if you had a lower price there at

6400 Fort Dodge, Iowa?

A. No, sir.

Examiner Norwood: Why was that?

The Witness: Because at that time, my recollection is that the Iowa Highway Department was awarding all of their business to Iowa State mills. It is my recollection we never got a barrel from the Iowa State Highway Department business.

6401 Q. If you had no hope of getting it, why didn't you leave the price unchanged?

A. I can't answer that. I simply followed instructions.

Examiner Norwood: Why did you bid, under those circumstances?

The Witness: We usually make a practice of submitting a bid in order to keep our name on the mailing list. In many cases if you don't bid, you wont get a copy when they issue a proposal.

By Mr. Wooden:

Q. If you have no hope of getting bids, why keep your name on the mailing list?

Mr. Leisure: That is mere argument.

Mr. Wooden: I thought the answer was, too.

Mr. Wooden: Will you please mark these for identification.

(The documents referred to were marked "Commission's Exhibit 1127-A, B and C for identification.")

By Mr. Wooden:

Q. Showing you paper marked for identification, 1127-A and B, will you, Mr. Neylan, identify it as a communication of yours?

A. It looks all right.

6402 Mr. Wooden: I offer it for the record.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

(COM. EX. 1127-A, B and C was offered and received in evidence.)

Q. As I understand this exhibit, Mr. Neylan, you gave instructions on bids for the State of Missouri—this is August, 1932—a million barrels—you gave instructions that the current delivery point price should be quoted in two counties that but that at all other points you should not pay any attention to the current price but use a price computed on the basis of a full mill price plus freight from mill to destination. Was that intended to make your

price at points other than in those two counties higher than the current price?

6403 A. It was not.

Q. Was it intended to make it lower than the current price?

A. It was not.

Q. What was the intention?

A. It was intended to comply with my recollection of the provisions of the bid form itself.

6404 Q. Well, can you say whether or not in so complying with the price at delivery points other than in those two counties, it was higher or lower than the current price at those points?

A. I cannot, because I don't know what the prices were, and I don't know what the freight rates were.

Q. Have you had in your experience sometimes deliberately bid high at certain points because you did not want the business at those points?

A. No, sir; we have bid in some instances because the form itself provides that your bid will not be considered where certain delivery points are picked, in competition or in comparison with bids that, according to the terms of the bids refers to them as being more flexible.

Q. Do I understand that you have not at times bid high at particular points intentionally?

A. No; we have bid—

Q. (Interrupting): You have bid intentionally high at some points?

A. Intentionally high? Bidding intentionally high was not the reason for that particular bid. It was to comply with the requirements of the bid form itself.

Q. Do you mean that the bid form required you and your company, as one bidder, to bid higher at some point than it required other bidders to bid at those same points?

6405 A. It does not. However, my recollection of this is that the prices that we knew to exist in much of the territory—I won't limit it to those two counties, because I don't know—but I have a recollection of times when the price, in our opinion, was too low. We were not interested in that particular business at the net realized that we could get, but if we only quoted in the few counties where our price was satisfactory to us, our bid would not be considered in competition with bids that named all

delivery points, because the bid form specifically stated that and carried a further provision that the price adjustments would be made on the basis of a comparison of county seat prices with the prices at points of destination not specifically shown in the bid, therefore, if you did not put in some kind of a price at these county seats, it would again make it hard for you to even get consideration in connection with your major bid.

Q. I think I can understand that. In other words, at points where shipments from your mill would give you an unsatisfactory mill net, you might at those points bid higher than—

A. (Interrupting): Ordinarily we would not bid at those points.

Q. But if you did bid, you would bid higher than you expected others to bid?

6406 A. We bid at a price that we thought gave us a satisfactory net. That might have the result of having that bid higher than the prices quoted by others.

Q. Can you tell me whether or not at the time of this exhibit that was written in August, 1932, the bulk differential was changed from fifty cents to forty-five cents?

A. No, I cannot. When I saw that—it looks to me like a typographical error.

Q. In other words, it was first typed "50" and then written over it "45?"

A. It might be, in dictating the letter, that you used the term "50" and then discovered that you used the wrong figure.

Q. There was such a change made along some time in the course of those years, wasn't it?

A. There has been a seesawing back and forth over a period of years on bulk.

Q. What have been the variations in the bulk differentials?

A. Well, at one time I believe—my recollection is that it varied. At one time it was 45, then it was 50 cents, and then it dropped back to 45 cents.

Q. And now?

A. It is 45 cents.

Q. Did it go from 50 to 45 some time during the

6407 depressed years of 1931 and 1932?

A. I really don't know; I don't recall.

Q. When was the last change made?

A. I don't know. It has been in quite a long while.
Q. At the present, 45?
A. Yes, sir.
Q. Will you identify a paper marked 1127-C for identification as an authentic copy of a document from the files of your organization?
A. (Examining paper): That is all right.
Mr. Wooden: I offer it in evidence.
Mr. Leisure: No objection.
Examiner Norwood: Received as marked.
(COM. EX. 1127-C was offered and received in evidence.)

By Mr. Wooden:

Q. What were the circumstances and reasons, as shown by this exhibit, Mr. Neylan, under which your company formally reduced its bid price to the State of Missouri, twenty cents a barrel?
A. May I see that again?
Q. Yes. (Handing paper to witness.)
A. My recollection is that we had bid the State of Missouri Highway Department. I think we were low
6408 at some points, and I think our bid was thrown out, I believe, as the result of some secret negotiations with some of our competitors, and I think when it came to our notice, we went in and served notice that our price was in line with what we believed was being quoted secretly. That is my recollection of it. I am not positive of it.
6409 Q. In other words, your 20-cent reduction was made to what you thought the competitors were doing secretly?
A. Meet or beat. We wanted the business.
Q. Did you get it?
A. My recollection is that we did not. I am not positive of it.
Q. Do you know whether or not you beat their bids?
A. I don't know. I think the only place you can get that is in Jefferson City.
Q. Well, the bids were opened publicly, weren't they?
A. They were opened publicly; and that's all you can say.
Q. I am asking you how your 20-cent reduction compared with the public bids?
A. They were still lower than our original bid, and my recollection is that our original bid was low.

Q. At some points?

A. I don't know all the points. I imagine in the counties that he mentioned there, so far as that goes.

Q. Did this have any effect upon the base point price with reference to commercial business?

A. I don't recall.

Q. Was this one of the instances you referred to as being price cutting on State bids?

A. It was one of the States that was buying cement around that time. I objected to it on the basis of
6410 time. My recollection is that it runs from 1929 up to 1931, may be before that.

Q. More pronounced in 1931, wasn't it?

A. I cannot answer that. That is not according to my recollection. It has always been pronounced.

Q. Was it pronounced in that case where you were low at one point, Fort Dodge, Iowa?

A. I don't know what the other bids were.

Q. Your own records show they were all the same at every point except Fort Dodge, where you were four cents lower.

A. I don't know what the condition was in Iowa. This might be even worse than Missouri, after they got inside.

Q. Do you know whether or not Marquette used to get business in Iowa?

A. I don't know. Our interest in Iowa was very, very slight.

Q. Showing you papers marked Commission's Exhibit 1127-D, E and F, for identification, Mr. Neylan, will you identify them as documents and copies of documents from your files? I believe the first two are original documents carrying the signature of your Mr. Mahon.

A. All right.

Examiner Norwood: No objection?

6411 Mr. Leisure: No objection.

(COM. EX. 1127-D, E and F was offered and received in evidence.)

6413 Q. I notice in Exhibit 1127-D your Kansas City office was instructed to observe a minimum price at the mill of $1.05 per barrel. This was in November, 1932. According to Exhibit 1126-B, you said that the net to your Kansas subsidiary of 71 to 75 cents was fairly attractive. Can you say what conditions intervened between No-
6414 vember, 1931 and November 1932 that would increase

your mill net from a fairly satisfactory figure of 71 to 75 cents to $1.05?

A. Well, I don't know that the 75 cents or the 71 cents was followed. That is purely a statement of mine, whereas—I don't know that it was followed in figuring the bid, as this is a direct instruction from the New York Office to the Division Office, telling him what to do.

Q. You knew it was followed at every point except Fort Dodge?

A. I don't know that, Mr. Wooden. I would have to check back on those bids with the freight rates in effect at that time.

Q. Don't your writings show that you were the same as competitors everywhere except at Fort Dodge on that Iowa bidding?

A. That is true.

Q. And it is the Iowa bidding that is referred to in this Exhibit 1126-B, about your 71 to 75 cent mill net being fairly attractive?

A. That is right.

Q. In this Exhibit 1127-D, Mr. Mahon states that the instructions given would result in a higher price at a number of destinations than was then being asked on commercial business. Was that on the same ground that you explained a little while ago, that you wanted to get
6415 your bid in, but you made it higher at some points, because the mill net was not satisfactory?

A. The letter specifically refers to certain sections of the bid, and I assume that those are the provisions that it refers to:

Q. Do you find that practice followed at times by other companies in the industry?

A. I don't know.

Q. I am now showing you papers marked for identification 1128-A to F inclusive. Will you identify them as authentic copies of documents from the files of your organization?

6416 A. All right.

Mr. Wooden: I offer them in evidence.

Mr. Wooden: Your Honor, with reference to exhibit 1128-A and B for identification, I want to limit the offer to the first paragraph, the fifth paragraph and the eighth paragraph. Of course, the offer also includes the parties addressed and the writer of the letter.

Examiner Norwood: The identifying matter.

Mr. Wooden: Yes.

Mr. Leisure: We have no objection.

(COM. EX. 1128-A and B was offered and received in evidence.)

Q. These papers relate, do they not, Mr. Neylan, to bids on requirements of the State of Indiana for 1,400,000 barrels of Portland Cement along in December, 1932, and apparently a readvertisement for the same quantity in March, 1933; is that right?

6417 A. Yes.

Q. And you bid on the entire quantity, as I understand you instructed to be done in December, 1931?

A. (Examining paper.) I believe we did. I do not see anything here that says we did. We naturally would have to.

Q. Was an award made on the December, 1932 bidding?

A. I don't know.

Q. In view of the fact that you find the same quantity being bid on in March, 1933, does that refresh your memory as to whether there was any award on the December bidding?

A. Well, it looks like these bids were not accepted. I don't see how the State could use 1,400,000 barrels between December and March.

Q. No, not use it. Deliveries for those quantities are usually taken over the course of a considerable period of time, aren't they?

A. That is right.

Q. Do you know why the bids of December, 1932, were rejected?

A. I don't know.

Q. Was that the time and occasion on which the Aetna Company got into the bidding with a low price by using the Wyandotte base in Indiana?

A. I don't know.

6418 Q. I notice you gave instructions to submit bids on a basis of a minimum mill net of $1.10 stripped in bulk. That was an increase in the price in the same territory, wasn't it, over what it had been?

A. I really don't know.

Q. Referring to Exhibit 1128-C you say "the minimum of $1.10 per barrel net in bulk will have the effect of advancing your prices in the territory where the absorption

of your company is more than ten cents per barrel and permit you to compete in all territory where your absorption is ten cents per barrel or less." Does that recall to your mind that the bids were on a higher basis than the price therefore in effect?

A. That would have the effect of raising prices at some points, yes.

Q. Were you proposing there to make your prices in that territory higher than your competitors' bids? Higher than your competitive bidders?

A. All we were proposing was a method under which we could hope to obtain at least equal consideration from the Highway Department, in response to the terms of the proposal itself. I have outlined that several times this morning, and that proposal was identical with many of the other proposals. If you don't bid, your bid is not accepted—at all points—because of the fact that the
6419 proposal itself states that very definitely, and for the second reason that you have got to put some kind of a price in there so that the State Highway Department can make adjustments, when consignments are made to points other than the County Seat specified.

Q. I was trying to find out whether you were here proposing to bid to the State at prices you expected would be higher than your competitors quoted at the same places?

A. We were quoting the State a price at every delivery point, limiting our bids as to the net realized at the plants, regardless of what happened, whether that was high or low. We had no assurance that everything was going to be the same at the other points.

6420 Q. It turned out that way, didn't it?

A. I don't know.

Q. Now, referring to Exhibit 1128-E and F, your Indiana vice president attaches an outline map of the State which he says indicates the counties, 13 in all, "where our bid in the county seat will be higher than the present price of the Lone Star in those counties." Why were you bidding higher to the State in those counties than the current list price of your company in those counties?

A. All he was doing was transmitting in the form of a map the effect of the instructions given in the previous letter.

Q. Yes; but my question was why.

A. In order to make our bid acceptable to the State under the terms of their own proposal.

Q. Not in order to make your delivered prices there higher than competitors'?

A. That was not the reasons, no, the reason for it was that the net realized under normal conditions in those towns was not satisfactory to us. We could not leave them out, because it would give the State an excuse for throwing our bid out; therefore, in order to comply with the stipulated proposals in the bid form itself, we had to device some means whereby we could put a price at those towns and at the same time not go below, at our mill, a price that we thought was fair or that was attractive.

6421 Q. In Exhibit 1128-F the 13 counties are indicated there in which you were going to make your prices higher than the current list price of Lone Star, are they not?

A. That is what the map shows; yes sir.

Q. Are the 13 counties there indicated, are they counties closely contiguous to other mills?

A. In some cases, yes, sir.

Q. As a matter of fact, aren't they all more closely contiguous to other mills by far than your own Limedale plant?

A. That would be true in the north. I am not so sure in the South.

Q. In the north the counties are closely contiguous to the Washington mill of the Universal?

A. Yes.

Q. And in the south they are closely contiguous to the Speed Mitchell mill and the Kosmosdale, Kentucky, mill?

A. Well, Kosmosdale, Kentucky, I wouldn't say.

Q. They are right in the territory of the Mitchell and Speed mills, are they not?

A. That is what I was looking at. I am not quite sure what county Mtichell is in. You see, we are in Marion County here. Jennings County marked "1" looks pretty close to our plant.

Q. Limedale is right here (indicating)?

A. Here (indicating) next door to Marion County.

6422 There it is.

6423 JOHN F. NEYLAN, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. Neylan, referring to Exhibit 1128-F, do you know whose handwriting that is on the margin?

A. I don't recognize it.

Q. What are the figures that are entered in some of the counties on this map comprising Exhibit 1128-F?

A. I would like to see the exhibit that accompanied this.

Q. There (handing paper to witness) is one attaching the outline map.

6424 A. (Witness examines) It says right on the exhibit here that the counties above current list price by amount shown in cents per barrel of cement, quantity also shown. I would assume that that meant that those counties were above our represented counties where our price as accepted by the New York office would exceed our current price.

Q. What was the idea of taking off the quantities in barrels and totaling them up in those particular counties?

A. To show how much that would put us out of the running on the total quantity. The proposal showed quantities per county.

Q. So you expected to be out of the running in those counties by the amount of those differences in price and the barrelage?

A. Well, our price would be higher than the price that we normally found in those counties.

Q. Doesn't your answer mean yes to my question?

A. Let me have that question again, please.

(The question is read.)

The Witness: Well, based on our knowledge of what prices we have found in those counties. We knew if we carried out the instructions given to our Indiana office that we would be higher by the amount that the freight rate plus the minimum specified would exceed the prices that we had previously found in those territories.

6425 By Mr. Wooden:

Q. It would have then resulted in your getting less than $1.10 net?

A. Assuming that the State followed the usual practice of giving it to the lowest bidder, yes.

6426 Q. Showing you a paper marked "Commission's Exhibit 1128-H for Identification," do you identify it as a tabulation made in your organization covering the bids received by the State of Indiana March 23rd, 1933?

A. I do not.

EVERETT MAC INTYRE, previously duly sworn, resumes the stand and testifies further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1128-H as a paper furnished to him by Mr. Neylan and Mr. Koch of International during a visit he paid to "his" office during the period from May 29, 1933 and May 31, 1933. He was interviewing Mr. Neylan and Mr. Koch and the paper was handed to him during the interviews he had with them.

6427 All of the figures and information appearing on the face of that paper aside from the exhibit number was on that paper as it was furnished to him at that time.

Mr. Leisure: Could I ask Mr. Neylan some ques-

6428 tions about it before passing on whether we want to object to it.

Examiner Norwood: Certainly.

JOHN F. NEYLAN, previously duly sworn, resumed the stand and testified further as follows:

PRELIMINARY EXAMINATION.

By Mr. Leisure:

Q. Mr. Neylan, in regard to Commission's Exhibit 1128-H for Identification, it states that it is a tabulation of cement prices contained in the proposal received March 23rd, 1933, for furnishing cement to the State Highway Commission of Indiana for 1933. From what basic data was that made up, do you know?

A. I may be mistaken, but to the best of my knowledge and belief, that is a tabulation of the bids as furnished by

the State Highway Department of Indiana, as compiled by them.

Q. As compiled by the State Highway Department?

A. This form, as I recall it, came to us from the State Highway Department of Indiana.

Q. And if we wanted to check that as to correctness, do you have any basic data in your office from which we could check it?

A. I really don't know.

6429 Mr. Wooden: I would like to say in that connection that 1128-G transmits an official copy of the tabulation to the New York office of the International.

Mr. Leisure: That would indicate that Mr. Neylan's testimony is correct, that it is an official tabulation.

(Discussion off the record.)

6435 By Mr. Wooden:

Q. Don't you frequently get copies of tabulations of bidding that are sent in by your representatives, to show you the results of bidding, Mr. Neylan?

A. We do.

Q. Do you accept them as reliable evidence as to what the bids were?

A. Well, we accept them as reliable, unless we have some other evidence to show that it is not reliable.

Q. And you did not check back in this case, did you?

A. I don't recall that we did check back in connection with this case; I don't know that we did. I merely recognized it as something that is prepared by the Highway Department.

6437 Examiner Norwood: Well, I will withhold the exhibit, subject to the Commission's counsel furnishing further additional information about it.

Mr. Wooden: I have no objection in the world to doing it except that it is a lot more time and trouble. We will do it if required. It is expensive to everybody concerned.

Examiner Norwood: The other objections will be overruled, but that in considering the objection as to its being a tabulation and not being accompanied by the supporting data, I have no choice but to reject the exhibit for the time being on that ground.

The witness said that the handwriting in Com. Ex.
6438 1128-i is not his handwriting. It looks like Mr. Cole's

handwriting. No portion of it is in witness' handwriting.

Mr. Wooden: I will offer the paper in evidence.

Mr. Leisure: That is a hand written statement by an officer of the Lone Star. I have no objection to its going in. I assume that it will not be received as binding on the other companies, however?

(COM. EX. 1128-I was offered and received in evidence.)

6439 Q. I notice on this exhibit the words "by phone" and then "Indiana 3/23/33" and "17 bids" and "based 170 Wyandotte."

Mr. Leisure: I think the exhibit speaks for itself, without reading it into the record.

Mr. Wooden: I am not.

By Mr. Wooden:

Q. (Continuing) Does that indicate to you, Mr. Neylan, that this was an instance in which the Wyandotte base was extended beyond the line in Michigan with the result of the Aetna Company being low in Indiana?

A. No, it would not necessarily.

Q. The Aetna Company was low, wasn't it, in nine counties?

A. I don't know.

Q. Will you read this language here on that exhibit that I am indicating?

A. (Witness examines.)

Q. Will you read it aloud?

A. It says "All list but L. S. & Kosmos" "Use of Min."

Q. Do you take that to be that "Use of Minimum?"

A. I imagine so.

Q. What is between the words "L. S." and "Kosmos" and "Use of Min."

A. Just a dash, a series of dashes.

Q. Aren't there two dashes, one above the other?

6440 A. Probably so. There are two marks on there.

Q. As a matter of fact, two dashes and then one below that?

A. That's right; there are three marks on there.

Q. Do you take "L. S." to be "Lone Star?"

A. I would assume so, yes.

Mr. Zimmerman: Are we to learn the meaning of the cipher?

Mr. Wooden: You may look at it. (Handing paper to Mr. Zimmerman.)

The witness was asked to identify Com. Ex. 1129-A to D as an authentic document from the files of his or-
6441 ganization. After examining the papers he said "1129-A" looks all right to him, but he does not ever recall seeing "1129-B to D".

6441 Mr. Wooden: Your Honor, I will offer 1129-A, and subject to check, I offer the exhibits 1129-B to D.

Mr. Leisure: I have no objection, your Honor. I think 1129-B falls within our stipulation. There is basic material which can be checked, and I think it comes under our stipulation as to tabulations.

(COM. EX. 1129-A, B, C and D. was offered and received in evidence.)

Q. These papers relate, do they not, Mr. Neylan, to the bidding on the Illinois Highway Department proposals in February, 1933, for the total requirements of the State of 3,300,000 barrels, do they not, with the instructions to limit you bidding to 1,100,000 barrels, I believe.

A. That is what that letter refers to. I don't know about the other; I would have to take a look at that.

Q. I note here in February, 1933, you were suggesting that your bid to Illinois be subject to a minimum net
6442 of $1.00 bulk at the mill, whereas your bid to the State of Indiana a month or two later, you used $1.10 as the minimum net which you were asking. Can you give any explanation of the reason for increasing your net by 10 cents on the bids to the two States?

A. No, I cannot.

Q. You also state in Exhibit 1129-A that that would probably make some of your prices higher than those of competitors with mills more advantageously located. Is that the same sort of a situation that we had in the case of the Indiana bids, where your bids in some counties were made higher?

A. Again it is an effort to stop your bid from being thrown out on the ground that you are not complying with the proposal.

Q. It was also an effort to preserve a certain mill net, wasn't it?

A. That is right.

Q. And showing you papers marked Exhibits 1129-E

to F, will you identify those papers as a copy of a compilation from the files of your organization (handing papers to the witness).

6443 A. No, I could not definitely say that that is.

EVERETTE MacINTYRE resumed the stand and testified as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1129 E and F as papers furnished to him by Mr. Neylan and Mr. Koch of International on May 29, to May 31, 1933. All of the writings and figures appearing on the face of the two papers—except the exhibit number and the words International No. 1 Sheet, Exhibit No. 100, International No. 2 Sheet, Exhibit No. 100—were on there when they were furnished to him by Mr. Neylan and Mr. Koch. He does not know whose pencil notations are on the papers. Those notations were on there when the papers were furnished to him by Mr. Neyland and Mr. Koch. The words "International No. 1 Sheet, Exhibit No. 100 and International No. 2 Sheet,

6444 Exhibit No. 100" are in witness's handwriting and were placed thereon at the time the papers were furnished to him by Mr. Neylan and Mr. Koch.

Mr. Wooden: Your Honor, I will offer this exhibit in evidence as Commission's Exhibit 1129-E and F.

6445 Examiner Norwood: As to Commission's proffer of Exhibits 1129-E and F, they will be retained for checking and the ruling will be deferred. The respondents will take 1128-H and 1129-E and F for checking.

Q. I am showing you papers marked for identification Exhibits 1129-G to K inclusive. Will you identify them as authentic copies of documents from the files of your organization?

A. (Examining papers.) All right.

Q. I take it, Mr. Neylan, that your statement, "All right," means that you identify them?

A. I will accept them as such, yes.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: I am not going to raise any objection to the competency of these, your Honor, but some of these letters clearly state hearsay evidence. The witnesses if

they were on the stand could not testify to them, and I object to the exhibit on that ground.

Mr. Wooden: Your Honor, I contend that when a respondent makes statements in communications in the regular course of business, that they are not in the category of inadmissible hearsay, no matter what he said.

6446 They are statements and acts of that respondent.

Examiner Norwood: What statements do you refer to particularly? May I see them.

Mr. Leisure: Where he states conclusions and opinions.

Mr. Wooden: Statements of conclusions and opinions are not hearsay, anyway. They may be otherwise objectionable, but not because of that.

(COM. EX. 1129-G to K inclusive, was offered and received in evidence.)

6447 Q. You cited the booklet as one of the reasons for refusing to quote F. O. B. mill to the State, didn't you?

A. I state that the booklet in its statement limits itself, that is, the statement that we will sell F. O. B. mill to the Government, in other words, to the United States Government purchases only. It is possible that somebody may have raised the question where our booklet says so and so.

6448 Q. Did you move up your minimum net on Illinois State bidding from $1.00 to $1.10 between February and April? I am referring to Exhibit 1129-A and 1129-J in that connection?

A. It is quite apparent that we did.

Q. Was there some improvement in the condition of supply and demand that enabled you, that permitted you to do that?

A. I don't know.

Q. I now show you papers marked for identification 1129-L and 1129-M. Will you identify them as copies of telegrams passing between your Indiana company and the representative of the Illinois Department of Public Works and Buildings—

Mr. Leisure: (Interposing.) How can the witness do that, your Honor?

By Mr. Wooden:

Q. (Continuing.) —and as authentic copies from the files of your organization?

A. I am sorry, but I cannot. I don't recall, from my own knowledge, those particular telegrams.

Mr. Wooden: I will offer these two papers subject to check, your Honor, with the statement that they were obtained by Mr. Bangert, a representative of the Commission from Mr. G. E. Pierson, who I believe was the president of the Lone Star Company of Indiana at the time.

Examiner Norwood: Is there any objection to that?

6449 Mr. Leisure: No objection.

(COM. EX. 1129-L and 1129-M was offered and received in evidence.)

Q. Mr. Neylan, will you explain why your organization bid the State, under your instructions, at $1.10 minimum net at mill, and when the State offered you 600,000 barrels at $1.10 at your mill you declined to take it?

A. I cannot. I was not consulted.

Q. I notice in the explanation that your Indiana company said the $1.10 net at your mill was below your cost. Did you give instructions to bid a minimum mill net which was below your cost on the Illinois business?

A. I don't recall. I don't know.

The witness identified Com. Ex. 1129 N to P as authentic copies of papers coming from the files of his organization:

6450 Examination by Mr. Leisure:

As witness recalls, Com. Ex. 1129 O and P, was either a newspaper clipping or some kind of publicity release. It came to "us", he believes, in this form; that is, copied by typewriter; "some statement that was floating around through the Middle West at the time".

Mr. Leisure: On the witness's statement, we object to Exhibit O-P as not binding on any of the respondents, and incompetent, immaterial and irrelevant.

Mr. Wooden: O and P, your Honor, was transmitted by a letter, which is 1129-N.

Mr. Leisure: That would not make any difference.

Examiner Norwood: Is there any further objection?

Mr. Zimmerman: I must say as to 1129-N, that I cannot see how that in anywise throws any light on any issue in the case or any charge in the complaint. I think it is quite apparent from the face of it that it does not. I think the Examiner should have an opportunity to

6450-A look at it and see.

Mr. Wooden: You have to consider them both together.

6451 Examiner Norwood: This refers to it as reasons for the rejection of the bids.

Mr. Wooden: I anticipated that objection would be made, and I will say that regardless of any other reasons, that the document transmitted with the inter-office communication of the respondent was in my opinion or is in my opinion, clearly within the res gestae rule of what
6452 grew out of the immediate circumstances.

6456 Examiner Norwood: N, O and P are not received at this time.

6457 New York City, N. Y.,
May 17th, 1938.

6458 Mr. Wooden: Your Honor, I am informed by the reporter that exhibits 1128-C, D, E, F and G are not shown by the record to have been received. It was my understanding that they had been received.

Examiner Norwood: They were received. It is on my docket.

Mr. Wooden: May the record show that at this time?

Examiner Norwood: Yes, the record will be corrected to show that.

(COM. EX. 1128-C, D, E, F and G was offered and received in evidence.)

Mr. Wooden: Mr. Leisure, may I ask if you have had an opportunity to check those tabulations of the State bids that you had on Friday?

Mr. Leisure: We have not quite finished that. We would like to have today on that if it does not make any difference to you.

6459 Mr. Wooden: That is all right.

JOHN F. NEYLAN, previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. You were speaking about a decline retroactive for five days to your various customers, as a matter of fairness to them. I take it that that applies to your customers who buy for resale, so that they may be on an equal competitive basis to those who buy on a decline or after the decline?

Mr. Leisure: There is no testimony so that they could anything.

Examiner Norwood: He is asking him now for the reason. I think he has a right to do that.

The Witness: I am sure that we make the price decline retroactive to practically all of our customers. That would include contractors as well.

Q. And also State purchasers?

A. Yes.

Q. That is aside from any element of competition on their part in the resale?

A. I don't know that competition enters into it under those conditions, Mr. Wooden. We make a rule that
6460 we apply to everybody in that case.

Q. It is really more a matter of liberality in that case than it is of fairness?

A. Well, it is applying a policy without fear or favor.

Q. Without regard to whether your customers need it in competition with other customers or not?

A. That would not neeessarily enter into it under those conditions.

6461 Mr. Wooden: At this time I would like to offer for the record a document previously marked and identified as Commission's Exhibit 282-C and D. The identification was made by Mr. Widman of the Commission's staff.

It is a copy of a letter by Mr. Neylan to Mr. Reiter, dated January 11th, 1935.

6463 (COM. EX. 282-C and D was offered and received in evidence.)

Q. Mr. Neylan, will you look at the exhibit. It is your letter, isn't it?

A. (Witness examines paper.) Yes, I think I recall this letter.

Q. Directing your attention to your language here on the first page in which you refer to the five-day waiting period under the Code, will you describe just what that five-day waiting period was?

A. Well, to the best of my recollection, the Code provided that prices had to be on file with the Code Authority five days.

Q. Before they became effective?

6465 A. Yes, before they became effective.

By Mr. Wooden:

Q. In your letter, Exhibit 282-C, you state that period was designed to eliminate price manipulation and wilfull price cutting. What is your definition of "wilfull price cutting?"

A. Where you publish one price and sell on another, or make secret rebates or concessions, or something of that kind.

Q. You mean intention price cutting, deliberate price cutting?

A. I would say that "wilfull' meant "delliberate."

Q. You went on to say that the results of such
6466 practices were chaos and constantly reduced the prices, with consequent diminishing returns to the industry.

Q. Had that been particularly true during the early years of the Depression?

A. Well, I wouldn't want to confine it to that period, Mr. Wooden. There has always been ups and downs in the cement industry. Prices are low, prices get low, and we have had a number of instances where that took place.

Q. The most striking illustration in your experience, I take it, was during the 1931 period?

A. In some sections of the country, yes, sir.

Q. Would you say that there was some wilfull price cutting on some of the State contracts?

A. Yes, I wouldn't hesitate to make that statement.

Q. Would you say that a mill which intentionally cut the delivered price at a given destination below what the sum of the lowest mill base price plus freight to that destination equalled, was indulging in deliberate price cutting?

A. Not in all cases; no, sir.

Q. In some cases?

A. There are cases, yes, where you would reach that conclusion.

Q. I say, if it were done in all the cases you have in mind, deliberately and intentionally, you would class
6467 that as wilfull price cutting?

A. Not necessarily. Any mill has a right to change its price any time it wants to. I can't control that. We have never attempted to.

Q. What is wilfull price cutting?

A. Where there are all kinds of secret negotiations and so on, deliberately. Usually deliberate price cutting takes place under cover.

Q. You mean it is not a direct cut at all?

A. It is a purposely direct cut—but there is every effort made to keep it secret.

Q. That may occur after the expiration of any waiting period, as well as before?

A. Not under the Code. He could, but he would be violating the Code, if he deviated from his filed prices. That is what we thought.

6468 Mr. Wooden: I offer at this time, your Honor, exhibit previously identified as 282-B, being a copy of a letter from Mr. Neylan to the domestic subsidiaries of his company, dated December 19, 1935.

Examiner Norwood: See if the witness can identify it.

By Mr. Wooden:

Q. Mr. Neylan, can you identify that letter further?

A. (Witness examining paper.) Yes, I remember that letter.

6469 (COM. EX. 282-B offered and received in evidence.)

Q. Mr. Neylan, I want to ask you about the language here in which you say "In the absence of price filing, the one thing which the industry will feel is the lack of information concerning land grant rates, and Government destination costs." Did you mean by that the

6470 industry could get along very well without price filing if it could get the information about land grant rates and Government destination costs.

A. Well, as far as I understood, Mr. Wooden, we had to get along without price filing. It was not a case of we could.

Q. Even though that were true, did you mean by this that the only thing the industry would feel was the lack of information concerning land grant rates and Government destination costs? You said "the one thing" which you would feel.

A. Well, Mr. Wooden, the wording of this is very obviously wrong because, according to my recollection of it, the very fact that we had price filings eliminated, the price filings as to destination costs, because they were a price filing.

6471 Q. But if you had the information on the land grant rates and destination costs, then so far as the

sales to the Federal Government were concerned, you could get along without the price filing?

A. Well, we would have to get along without the price filing, because that was removed. Now, the object of this information to our people was, and it was according to my recollection, that land grant rates were going to be collected and treated the same as other rates issued by the Freight Rate Bureau.

Q. And serving the same purposes as the Freight Rate Bureau compilations of rates?

A. Just as a matter of information, so far as we were concerned. And I will make the statement here that so far as I know from my own personal knowledge, we have never used a land grant rate published by the Institute.

Q. And you issued instructions, did you not, for your subsidiaries to collect and furnish the Institute with Land Grant Rate information?

A. I did.

6472 Q. Did you ever hear the statement made by any of your representatives of any of your competitors to the effect that the five-day waiting period provided an opportunity to see the fellow and talk to him if he found a lower price?

A. No, sir.

Q. Did that enable the Industry to raise prices?

A. No, sir.

6474 Q. Mr. Neylan, will you identify these papers marked for identification 1130-A and B, as a circular of the Lone Star Cement Corporation, dated February 22, 1935, addressed to your trade?

A. I remember the circular, Mr. Wooden, but I cannot say about this writing down here (indicating). I never saw that.

6475 Mr. Wooden: I will now offer the circular, excluding the writing at the bottom.

6477 Q. Mr. Neylan, will you produce a copy of your circular of February 22, 1935, of which this is a duplicate?

A. If I can.

Q. And if there is a later circular on the same subject, will you produce it also?

A. If I can; if they are available.

Mr. Wooden: For the time being, then, your Honor, I will just withhold this.

Mr. Zimmerman: The offer is withdrawn?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. The policy of your organization, if I understand it, Mr. Neylan, with regard to sales through the dealers trade has been, in general, as I understand it, to sell direct to the Federal and State Governments?

6478 A. Generally, yes, sir.

Q. Was there an exception made to that general policy in connection with the development of W.P.A. purchases?

A. Well, I don't know that it came in connection with W.P.A., Mr. Wooden. That was one of the later developments.

Q. Suppose I make it, say, Federel Emergency Relief purchases?

A. Well, you might call it an exception, yes, in other words, you classify that as a Government agency.

Q. In other words, your policy has been to sell Federal Emergency Relief requirements through the dealer?

A. No, sir.

Q. Will you state what it has been then?

A. It followed pretty generally our general practice, in other words, of connecting with those classes of work that we would normally sell direct, we will sell W.P.A. or any branch of the Government, either—it applies, generally, to temporary employment relief agencies on a direct basis. On those classes of work where we would normally sell through a dealer under those conditions, we sell through a dealer.

Q. But the Federal Emergency Relief project has not been a normal factor, a normal condition, has it? It has been something that has developed only during the

6479 depression and to meet the situation created by the depression?

A. Well, it depends on what you call "normal." We have been going at it now for five years, pretty near. It looks like it is an institution.

6480 Q. Prior to that time you sold the Federal Government direct in carload lots?

A. In most cases. I think there were even some exceptions to that rule.

Q. Referring to this exhibit for identification, 1130-A, you informed your trade, did you not, that the Federal and

State Governments, would be sold direct except that work for the Federal Relief Agencies located entirely within the City and Town limits, would be sold through dealers?

A. I think that is true. If it is on there, that is the statement.

Q. Did you have requests from dealers for the adoption of that policy?

A. Well, I don't know, Mr. Wooden, that I can say that we had direct requests for that particular policy. We have had any number of instances, during the Code and after the Code, where the dealers, apparently were not satisfied with the way we were selling?

Examiner Norwood: Was that the policy that was generally adopted by the trade?

The Witness: Well, if one company started, it would pretty near be followed by others, or run into opposition with the people we were trying to sell.

Examiner Norwood: Many of these companies did follow it, did they?

6481 The Witness: They certainly did.

By Mr. Wooden:

Q. Did you have some negotiations with Dealer Associations on the subject?

A. I don't recall of any negotiations that we personally, that our company had with any Dealer Associations. We have had kicks from associations, but we have not discussed it with them, to my knowledge. We refused to meet with them, and we refused to meet with any group of dealers.

Q. Your company has been something of an outstanding factor in protecting the dealer in his trade, have you not?

A. We always have been, that is, we have always sought the dealer trade. Whether you call that protection or not, I don't know, but we have always been very anxious to sell as many dealers as we possibly can and to try to meet their views, where we could possibly do it.

Q. As to the class of trade which you might sell direct?

A. We don't in all cases.

Q. I mean, meet their views as to the class of trade that you might sell direct?

A. Well, there have been times where we made direct statements that we would sell classes of work direct, to which I am sure the dealers did not take with any great

amount of grace. Our company has always tried to
6482 get as much of that dealer trade as we possibly can. We look upon it as the backbone of our business.

Q. Were you represented at any of the conferences with WPA purchasing officials and Mr. Reiten and Mr. McQueen on the subject?

A. I did, yes. I was there myself on at least one occasion.

Q. Mr. Carnahan, of the National Retail Lumber Association?

A. He was there, but I didn't know he was going to be there when I went down there.

Q. Did you put in any of your circulars in 1935 a provision recognizing the definition of a legitimate dealer, which the dealers advocated?

A. I don't recall that, Mr. Wooden. We have tried to define a dealer as long as I have been in the business, and I have heard them argue about that going back to 1900.

Q. Sometimes your idea of what was a legitimate
6483 dealer in a particular instance, would that be in conflict with what the retail associations thought?

A. Absolutely. We decide our own dealers, regardless of associations.

Q. Did you have dealer associations provide you with lists of dealers that they considered the legitimate dealers?

A. I know of one or two instances where they tried to, but know also of those instances where we would not take it.

Q. You mean you would not even accept the list itself?

A. We refused to let our men recognize even any discussion concerning it. Our position has been that our definition of a dealer, whom we recognize as a dealer, is strictly our own. We don't care what the associations think about it, or what our competitors think about it.

6484 Q. Will you identify, Mr. Neylan, the papers marked 1131-A to D inclusive, as authentic copies of documents from the files of your organization?

Q. Can you identify them?

A. They look all right.

6486 (EX. 1131-A, B, C and D was offered and received in evidence.)

6487 Q. Do you recall the time—I believe it was in 1930, Mr. Neylan—when the Lehigh Company went out to

the dealers with an announcement that they were going to withhold the dealers' mark-up or margin, until the end of the year, and reduce it to 5 cents?

A. I remember Lehigh's statement of policy at that time, but I don't recall that it had those provisions in it.

6489 Q. Wasn't there a condition at that time characterized by a lot of price cutting among dealers or on the part of dealers?

A. Mr. Wooden, I never recall a time since I have been in the cement business, including right today and yesterday, where that condition don't exist.

Q. Do you remember whether or not that was a factor and so stated as a factor in the Lehigh adopting that policy in 1930?

A. I don't recall that, no. That would be clearly evident in the statement of policy that they issued.

6490 Q. Did the Lone Star organization adopt a policy at that time that was different from that of the Lehigh?

A. We did not alter our policy at that time.

Q. Was the dealer accustomed as a general thing in the handling of your cement to make a markup of ten cents per barrel?

A. Well, he could make any markup he wanted. There was, however, in there, as I recall, a trade discount of ten cents a barrel. He could add anything to that price that he wanted to. We had absolutely no control over that.

Q. Did you continue the ten cent trade discount during the time that Lehigh put out this new policy and statement of policy?

A. For a time, yes.

Q. If your dealer should pass on any of that ten-cent trade discount to his customers, didn't that have the effect of changing or altering or affecting your delivered price?

A. No, it did not change our delivered price any. It may have changed his price.

Q. It would have been below your delivered price, wouldn't it?

A. No, not to that class of trade that he usually sold to.

Q. You only had one quoted price at a given destination?

6491 A. That is all. And that was to the dealer. We had no price to a contractor at that time.

Q. Had it been the policy of your organization to quote

and sell in the various territories only through the legitimate dealers, with certain exceptions?

A. May I have that question again?

(The question was read.)

The Witness: Well, I don't know what you call "legitimate dealers." We will sell anybody that we think is a dealer, regardless of opinion pro or con.

6492 Q. Yes, but in general you have followed the policy of selling what you considered legitimate dealers?

A. Yes, what we considered dealers.

6493 EVERETTE MacINTYRE, recalled, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1131 E, 1131 F as photostats of papers that were furnished to him July 8, 1931, by Mr. Koch and Mr. Hogan of the International Cement Corporation, 342 Madison Avenue, New York. That
6494 was at the time that he was examining the files of the International Cement Corporation, and during the time that he made certain selections from those files. They furnished him the selections, and photostats were
6495 made of the selection. These are the exhibits, the photostats of two sheets so selected.

Mr. Wooden: I offer the exhibits in evidence.

6499 Q. Will you undertake to produce the original of that paper, Mr. Neylan?

A. If it is available, and if I can get it, yes.

6500 Examiner Norwood: Does counsel make no point of it being a photostat instead of the original?

Mr. Leisure: No, I do not. That would be a technical objection. But it is not the best evidence, and I do not consider it so, under the Commission's ruling.

Mr. Wooden: You won't now need to look for the originals, Mr. Neylan.

By Mr. Wooden:

Q. Some reference is made in this document, Mr. Neylan, to the causes and practices which brought about the present market conditions in connection with large cement contracts. What is your recollection of the causes and

practices that brought about the present market
6501 conditions in connection with large cement contracts?

A. I don't know that there was any market condition that affected us at that particular time. It may have affected the dealers, but I didn't know it at that time. Our position has always been with all the dealers' associations, that we would not meet with them, we would not discuss with them any matters of policy, any matters of marketing conditions. Our invitation was always out to our individual dealers, to always come in and sit down and discuss the matter with us.

Q. Will you identify papers I hand you now, marked for identification 1131-G, H and I, as copy of a communication from your representative in Louisiana to your New Orleans office?

A. Yes, I will accept that.

Mr. Wooden: I offer it.

6507 (COM. EX. 1131-G, H, and I was offered and received in evidence.)

6508 Q. Referring to 1131-G, H and I, Mr. Neylan, would you wish to modify your previous statement that you attended dealer associations and discussed these questions of trade channels.

A. I do not. I still say that we never did. Here is a case where it is clearly evident that a salesman violated his instructions. Here is the case where the dealers, following the custom that has been in practice so far as I know as long as I have been in the business, and following my association with other businesses exactly in the same way, once a year in certain sections, they will hold what they call an annual meeting. Salesmen attend that meeting. The object of that meeting is, in 999 cases out of 1,000, purely social. It may be a fishing club; it may be anything; as a matter of fact it may be an excuse for a lot of people getting gloriously drunk; but here is a case—

Q. Who?—

A. Please let me finish. Here is a case where somebody injected in there a question of policy. Our man, according to this very report, went to that meeting, charged with one idea, that if a question of policy arose he was to sit by and say not one word, because that was his instructions. That always originated at the top. He violated that.

Q. Who was your Mr. White?

6509 A. Mr. White at that time I believe was a salesman in New Orleans.

Q. A salesman?

A. I don't know whether at that time he carried the title of sales manager or not. It was a case of in and out with Ben White. Now he is and now is not. Today he is a salesman. That has been the general status for years.

Q. I notice your Mr. Fain attended the meeting under Mr. White's instructions.

A. Certainly. As a social proposition we attend all those meetings. We attend them every year. We attended them last year. But we cannot guarantee what those dealers are going to bring up when they get there. He went there with one instruction, to take no part whatever in any discussion concerning policy. You will find hundreds of records of references of that right in our files, if you will produce them.

Q. These various initials on the top of the document, are your initials there, and whose are the others?

A. This is mine here. This is Mr. Koch's, Mr. Hogan's, Mr. Bissell's and Ben Wallace. As a matter of fact, he may have gotten his tail burned for even discussing a matter of that kind. I don't know. He probably did.

Q. He may have? You don't have any definite
6510 recollection that he did? You merely suggest that he may have?

A. Well, if it was following the general policy, the general practice at that time, he did, because Mr. Struckman was very insistent on that particular feature.

Examiner Norwood: Do you recall him being disciplined for that?

The Witness: No. I don't recall it offhand; but I know of instances where that has occurred, where somebody talked out of turn and got his ears pinned back for doing it.

By Mr. Wood:

Q. That contained useful information, didn't it? Wasn't these information there that he reported?

A. That he reported the information would be perfectly all right; but the moment he opened his mouth he violated instructions.

Q. He did not report only what he said, but what others said.

A. We are always glad to get the information.

Q. The point is, he should not have said anything?

A. Those were the instructions he went over. He admits that in his own reports, he was told to sit quietly by and have nothing to say.

Q. Referring to Exhibit 1131-A, the statement is made there that the dealer members of this Metropolitan
6511 Providence Association considered the quotations of Lehigh, Alpha and Lone Star in a new plan of marketing set forth by them. Then: "Each and every member is conversant with the causes which led to the adoption of this plan." Can you tell us what the causes were that this writer said each and every member of his organization knew what they were?

A. We did not change our plan, Mr. Wooden; so all I can assume from my recollection at that time is that it was not satisfactory to Lehigh and maybe they went over and told them. I don't know. We certainly did not. As a matter of fact I don't know whether our dealer was even a member of this organization. We only sold one dealer in Providence. I doubt it.

Q. It refers to 95% of the dealers being in the organization, I believe.

A. The other 5% might represent our share in the Providence market.

Q. But you don't know whether your dealer was there or not?

A. No, I don't.

Q. Showing you papers marked 1131-J to M inclusive for identification, will you identify them as an authentic photostatic copy of the letter by your Mr. Hogan to Mr. Struckman?

6512 A. I recognize that signature as Mr. Hogan's, but I don't recall ever having seen that one.

6515 Mr. Zimmerman: This part marked in red pencil is excluded.

Mr. Wooden: Yes.

Examiner Norwood: I have made that definite on the record.

(COM. EX. 1131-J-K-L and M was offered and received in evidence.)

6517 Q. Showing you papers marked for identification Exhibits 1131-N and O, will you identify that as a

photostatic copy of a letter from your Mr. Dwight Morgan?

A. (Examining paper.) That is Mr. Morgan's signature. I don't recall the letter. It evidently reached me, because according to that, I checked it off.

Mr. Wooden: I offer it.

Mr. Leisure: Is counsel offering the entire letter?

Mr. Wooden: Yes.

Mr. Leisure: There are hearsay statements in here where he purports to speak for other companies which, it seems to me, should be excluded.

6518 Examiner Norwood: I shall overrule the objec-
6519 tion and admit these documents with the understanding that if it appears that there are any statements in there which are purely hearsay, they will be disregarded. That would depend upon the consideration of the entire text and the circumstances.

Mr. Wooden: I take it you mean by "pure hearsay," hearsay that is not competent or admissible on any ground?

Examiner Norwood: Yes.

6520 Mr. Zimmerman: As I understand the Examiner's statement, it means in substance this: that where in any exhibit, such as the series of exhibits marked 1131, a statement is made by the writer to the general effect that "I saw A and A made such and such a state-
6521 ment to me," or "I made such and such a statement in his presence," that would not be anything else except hearsay as to A or the respondent that A was supposed to be connected with, and it would be disregarded by the Examiner in determining what the facts are, to be found in the case, unless it were afterwards in some way brought home to and connected up with A or A's respondent?

Examiner Norwood: I think counsel's statement is 100% correct as expressing what I would follow.

6522 (COM. EX. 1131-N and O was offered and received in evidence.)

6523 Q. Referring to the marginal hand written note at the side of paragraph 3; is that Mr. Koch's writing?

A. I cannot say that definitely. It might be.

Q. Do you think it is?

A. I don't know. It is pretty indistinct, to begin with.

Q. Can you make out the first word?

A. No. I was trying to when I read that originally. It does not make sense to me.

Q. Was this man, E. B. Johnson, that is referred to here, was he secretary or an official of some Builders Supply Dealers Association in the District of Columbia?

A. E. B. Johnson was connected, and still is connected with the firm of Fries, Beal & Sharp, Washington dealers.

Q. Yes. Was he secretary or some other official of the Builders Supply Dealers Association there?

A. I don't recall. I don't recall that they ever had an association there. They may have. As a matter of fact, Johnson has never been friendly with our com-
6524 pany at any stage of the game, and to know him you have to appreciate the statements that are made in that letter.

We had him at an NRA hearing in Washington in connection with Article XI, as I recall it, and he got up there and started to read the White Book into the record, talking about cross shipping, and they almost had to carry him off the stage.

6525 Q. The competitive sales plan referred to here was the Lehigh plan, was it not?

A. I imagine so.

Q. In what respect was the competitive sales plan in view of the opposition of the dealers to it?

A. I don't understand that question.

Q. The dealers were quite generally opposed to the Lehigh plan, were they not?

Mr. Leisure: I object to that question. The witness is not a dealer and cannot speak for them.

Examiner Norwood: He probably knows whether they opposed it or not.

The Witness: Some of them did and some did not. It all depended on how it struck their fancy.

By Mr. Wooden:

Q. The Lehigh Sales plan was withdrawn some time afterwards, was it not?

A. As I recall it, yes.

Q. It failed of becoming established?

A. I don't know whether they consider that it failed or not. They withdrew it.

6529 Q. Which of your Lone Star mills, Mr. Neylan, are directly affected by the competition of foreign cement?

A. Hudson, Nazareth, Norfolk, Birmingham,
6530 Louisiana, Texas.

Q. What is the extent of the area in which they meet competition of foreign cement? Is it a certain strip along the seaboard, or what?

A. Do you mean where they come in contact with foreign?

Q. Yes.

A. It is all over the eastern, southeastern Gulf coast areas.

Q. Do you have in those various areas so-called special prices to meet foreign cement competition?

A. We do not. In other words, we have not put those prices in; we are meeting prices of that kind that were put in by others.

Q. I meant that you make special prices in order to meet that foreign cement competition?

A. We have at different times, but right now somebody else has done it.

6531 Q. Have there been some periods when you did not have the special prices,—that is what I am getting at.

A. Oh, yes.

Q. Can you state the last period of that sort in the New York market?

A. My recollection is—I think prior to 1929, I don't believe there was any foreign-induced prices in there.

Q. How about the period between 1933 and 1935?

A. Yes, I think there was probably a time in there. I don't think it was very long though.

Q. During that period, was the price of the New York market made in the usual way of the sum of the base price plus freight from Lehigh Valley?

A. Well, I don't know whether it was in the Valley or from Hudson.

Q. But one or the other?

A. I believe there was a time in there. How long that way, I really cannot tell without referring back to the record.

Q. During that period, there was foreign cement being imported and sold in the New York market?

6532 A. I really don't know. There have been some times when the foreign petered out or disappeared for the time being, and then came back in again. The same thing is true all along the coast both north and south.

Q. That is more likely to happen, isn't it, when your price is on the regular basis than when you have specially low prices to meet the foreign competition?

A. It will happen at any time.

Q. Are there arbitraries or special prices to meet foreign cement competition in the effect at the present time in the New York market?

A. Yes, I think there is.

Q. And are there special prices in effect to meet foreign cement competition pretty well along the Atlantic seaboard?

A. Well, in some sections, yet. There are other sections where there are not.

Q. Will you state what sections there are and which there are not?

A. I believe in the southeast, starting from North Carolina south, to certain sections of Florida, there are low prices in effect there. Then there is an area where it takes in Virginia, Maryland, that is the eastern shore, Delaware, Pennsylvania, and a section of New Jersey, where there are none. Then you go up into New England and there are some prices in effect along the New England coast.

6533 Q. Specially low prices?

A. There are lower prices, yes.

Q. Can you say whether or not there as specially low or arbitrary prices all over the New England States?

A. No, they are not all over the New England States.

6534 Q. Are they all over the States of Massachusetts, Connecticut and Rhode Island?

A. No, sir.

Q. In a general way, what determines the extent of the territory in which these low prices to meet foreign competition obtain?

A. Well, I don't particularly know about the present prices. We didn't put them in.

Q. You know what they are?

A. Oh, yes, in most cases I would assume that it was

the influence of foreign cement, where they found it. That is the way we determined it when we put them in.

Q. What is the extent of foreign cement in that territory?

A. You cannot pin that down to a particular area. Wherever they get a buyer.

Q. Distance to which it can be shipped and sold is somewhat limited, isn't it, by the cost of getting it from the Seaboard?

A. I don't believe that would limit it at all. I have never found foreign prices—that the foreigner had any difficulty in lowering his price to any point that it was necessary, to get the business.

Q. How far from the Seaboard have you found foreign cement to be sold?

6535 A. Oh, probably a hundred miles.

Q. Do you have foreign cement brought in at Norfolk?

A. Well, we have had some, yes, but not very much.

Q. You have not had any specially low prices to meet the foreign cement in that area?

A. Not necessarily. If it becomes necessary we naturally will put the price in. The cement that was brought in there was brought in on a trade, as far as we could figure it out, trading tobacco for cement.

Q. Do you have special low prices to meet foreign cement in any of your Gulf orders?

A. Yes.

Q. At the present time?

A. At Mobile, I believe at Pensacola, I believe Port St. Joe. Our mill town, of course, is New Orleans.

Q. Did you at one time, did your New Orleans mill at one time adopt a policy of refusing to sell to dealers using foreign cement?

A. Our company did.

Mr. Zimmerman: I make an objection to this entire line of testimony. It seems to me that there is no claim, there is no showing, and there will be none, that this question of importation of foreign cement in anywise involved
6536 the whole of the industry, the whole of the respondents, to this group of respondents in this case.

6537 Mr. Wooden: No, your Honor. There is a definite section in the complaint 7-H, relating to this foreign cement matter. I would assume that without any

question the market conditions in the Atlantic Seaboard are important information to be concerned with the case, even though they do not affect the Middle West.

6541 Mr. Zimmerman: I want to put in a timely objection so far as the respondent Marquette is concerned as to any evidence as to the methods employed by
6542 any of those companies engaged in selling cement on the Seaboard. My objection goes to the point that there is no evidence that the Marquette Company has at any time been engaged in business in competition with others at the Seaboard, and unless and until that is shown, the evidence should in no wise be binding upon them.

Mr. MacIntyre: In fact, that is exactly the contention of respondents who have sought higher tariffs against foreign-made cement. Now, as to the testimony being received with any understanding, I should think it would be proper for it to be received with the understanding that unless it is shown on the face of the record when the proceedings are closed to have some application to the respondent Marquette, of course it should not be
6543 considered with reference to the Marquette Company.

Examiner Norwood: We have that understanding all the way through. We have stated it a great many times. I shall deny the motion. Proceed with the hearing.

Q. What is the Metropolitan New York price in effect at the present time to meet foreign competition?

A. My recollection is it is 2.14 in cloth.

Q. What does that net you in the Lehigh Valley mill?

Mr. Leisure: I thought the witness testified immediately after luncheon that it was the Hudson mill that was affected by these prices.

Mr. Wooden: He said the Lehigh Valley made the price.

The Witness: It looks like 1.32. That is my recollection of it.

By Mr. Wooden:

Q. That is in cloth?

A. Well, the same thing would be true in paper? That is the net that you get at the Valley.

Q. Stripped price would be forty cents off of that?

A. Oh, no. I have taken forty cents off and start with

2.14 in cloth. Take off forty cents for the sacks, and that makes 1.74. My recollection is that the rate is 42
6544 cents. That would be 42 from $1.74, from which, of course, you would have to deduct the cash discount if the Government took the cash discount.

Q. Do you ship it to this market from your Lehigh Valley mill?

A. Some few shipments, yes.

Q. What is your net on the price that you get for your Hudson mill?

A. It would be virtually the same by rail, because, as I recall it, the rail rates from Hudson to New York are the same as from the Valley.

Q. You actually ship it by water, do you not?

A. Very little now. Your barge rates have gone up to where by a practical application of rates, the rates are higher than the railways, unless you can keep it in full barge lots.

Q. Is not the delivered price in some sections of New York City $1.75 in paper?

A. $1.75?

Q. In paper?

A. It would be $1.89 on today's price.

Q. In paper?

A. Yes.

Q. You take 25 off for the paper?

A. That is right.

6545 Q. Is that the way you figure it?

A. Yes.

Q. And then how much freight do you take off from that?

A. The same amount of freight. Your rate applies whether it is in cloth or paper, 42 cents.

Q. Doesn't that reduce your net to less than $1.10?

A. No.

Q. To $1.22?

A. I don't see how.

Q. 25 off for the paper, and 42 off for freight.

A. No, wait a minute. You are taking 25 cents off for paper again.

Q. I don't want to do it twice, of course.

A. You have $1.89, which is your paper price to start with. Now, you take off 15 cents which is the cost of paper. 25 cents representing the cost of paper, 15 cents plus 40

cents for the cloth, so there you get $1.74, which is exactly the same as you get when you take off your 40 cents per sack, and then take off 42 cents for your freight, which will give you $1.32.

Q. That is your mill net for shipments in to New York at the present time?

A. To those points which carry a 42-cent freight rate.

Q. Do some points carry more than 42 cents?

A. Yes, they do.

6546 Q. In the Metropolitan District?

A. Yes.

Q. How much more?

A. I don't know. It varies.

Q. Do some carry up as high as 54 cents?

A. Some may where it requires—I think probably the rates are highest to points on the South Brooklyn Railroad, which would be out around Vanderveer Park.

Q. That would reduce your net by that much more?

A. That would reduce our net by the difference between the rate actually paid and this 42 cents which we figured originally.

Q. Isn't your base price at Lehigh Valley $1.65?

A. Stripped, yes.

Q. This $1.37 figure is comparable with that, isn't it?

A. No.

Q. Putting them on the same basis, wouldn't your base price have to have the 15 cents for paper to get there on the same basis?

A. I don't see how you can compare those prices. One is your maximum net at the mill.

Q. And you actually obtain that in your sales made on the Lehigh Valley base, don't you?

A. Yes, but it is equally true that where you are operating against a lower destination price, if you
6547 want the business you have got to meet that price or stay out if you don't want it. That carries with it a reduction in your net, naturally.

Q. In other words, you are taking the reduction in your net to meet foreign competition here in this market of as much as—what is it? 25 or 30 cents or more?

A. About 33 cents.

Q. If you are willing to accept a net for your business in the New York market as low as $1.32, why wouldn't you

consider accepting a net that low on other portions of your business?

6548 A. Well, you are assuming that we are willing to accept that. We are not willing to accept it; we have got to take it or leave it.

Q. I appreciate that. Are you selling it at a loss?

A. I don't know; that would have to be determined by figures that would be worked up as to our costs, and so on, but there is one point that you overlook. New York represents an important market.

Q. That is what I was going to take up next. How large a volume or proportion of your business of the Lehigh Valley or Hudson Mills comes into the New York market?

A. Well, that is pretty hard to say. I think in 1937 it was about twenty per cent of our Hudson shipments into the New York market. It would probably be somewhere between ten and fifteen per cent of our total.

6549 Q. Were there other points that New Orleans, where you adopted a policy of not selling dealers who handled imported cement?

A. In November, 1926, we put that circular out to our trade in every point where foreign competition was experienced.

Q. Did that include New York?

A. That included New York.

Q. Did that have any effect upon the base price at your mills?

A. Not to my knowledge, no; I do not believe we changed any prices at that time.

Q. How do you avoid refusing the base price at your mills, when you have arbitrary delivered prices in effect in certain markets that result in a mill net lower than your base price?

6550 A. How do you avoid it?

Q. Yes?

A. I don't understand that question.

Examiner Norwood: Read it.

The Witness: I mean I do not understand the construction of the question itself. I cannot see the point in avoiding anything.

By Mr. Wooden:

Q. You have different prices in effect at different localities; is that right?

A. That is true.

Q. And how do you avoid the low price in effect at any given time as affecting your higher price and pulling it down to the level of the lower? That is what I am getting at.

A. I still do not get the point of your question. I still do not get what bearing it would have on the other price.

Examiner Norwood: Well, does the regular mill base price affect this other low mill net that is made to meet foreign competition?

The Witness: Not necessarily, no.

By Mr. Wooden:

Q. And the lower mill net to meet foreign competition does not affect the mill base price?

A. It doesn't have to; no, sir.

6551 Q. Has there ever been a time when it did?

A. Not that I recall.

Q. Showing you a paper marked 1132-A and 1132-B for Identification, will you identify it as a copy of a letter that you issued to your Mr. McConnell in December, 1932?

A. Yes, I recognize it.

Mr. Wooden: I offer it in evidence.

(COM. EX. 1132-A and B was offered and received in evidence.)

Q. Did other companies selling in the Metropolitan District of New York also adopt a policy of classifying dealers who handled foreign cement as competitors?

6553 Q. Do you know whether or not other companies announced at that time that they would not sell such dealers?

A. I do not know. I do not recall ever having seen any such statement of policy.

Q. Would you undertake to refuse sales to dealers handling foreign cement in New York that your competitors would continue to sell such dealers?

A. Yes, sir; I would. And we did.

Q. Why didn't you put this policy into effect prior to this time, December, 1932?

A. Well, to the best of my knowledge and belief we were not particularly hit, prior to that time, in the New York market.

Q. I notice you give your Mr. McConnell certain instructions in this exhibit 1132-A and 1132-B, and ask him to

arrange to have Mr. Bradley watch as closely as possible the known foreign cement deposits in this town. Who was Mr. Bradley?

A. One of our salesmen in that area, in Brooklyn.

Q. And have the representatives in New Jersey watching deposits in Newark.

A. That is right.

Q. Who was that representative?

A. I don't know, at that particular time. Bradley is with us. I don't believe the salesman that was in
6554 New Jersey is with us any longer. We had quite a shake-up in that organization since that time.

Q. You asked Mr. McConnell to have periodical reports made, showing what dealers are drawing cement from the warehouses from time to time. Did those reports come to your attention?

A. Yes, sir; they did.

Q. Where are those reports at this time?

A. Where are they?

Q. Yes.

A. I really don't know.

Q. Are they in existence?

A. I don't know.

Q. Will you—

A. They come in the form of salesmen's reports. Our salesmen are supposed to make daily reports. They carry that on the face of the reports, but we do not undertake to keep that for any length of time, because the information is of no further use to us. It is a printed form that is devised for the salesmen.

Q. I am not interested in anything except the periodical reports showing what dealers were drawing cement from the warehouses, foreign cement.

A. That would appear on the daily reports, on which he reports his activities, and not necessarily kept, be-
6555 cause we are not interested in post mortems in this business, in the sales department.

Q. Will you ascertain whether such reports are available?

A. I will try to.

Q. And produce them if they are?

A. Yes.

Q. Showing you Exhibit 1132-C for Identification, will

you identify that as a copy of a circular by your Mr. McConnell in relation to this matter?

A. Yes, it looks like one of his.

Mr. Wooden: I offer it.

6556 Mr. Leisure: No objection.

(COM. EX. 1132-C was offered and received in evidence.)

Q. In Exhibit 1132-B, you instructed Mr. McConnell to have your representatives watch the foreign cement deposits at various warehouses and report what dealers were drawing cement from them. Will you state just what your salesmen did in that connection?

A. Well, they go around to talk to these dealers, and naturally they know the warehousemen and they invariably go back into the warehouse to see what brand of cement has gone into the warehouse.

Q. These warehouses were terminal warehouses where the foreign cement was stored for distribution, weren't they?

A. In some cases, yes; in other cases they were dealer warehouses.

Q. But in that connection, where you gave those instructions, you referred to the Brooklyn deposits being in lower Brooklyn and the Bohack Terminal, and in New Jersey at Newark or Port Newark, and said that those should be watched. What I was asking you is what your salesmen did in watching the warehouses where this foreign cement was on deposit?

6557 A. I assume that every once in a while he would go around and see if he could find any dealers' trucks or contractors' trucks hauling foreign cement. And there is another angle to this Brooklyn stock. As I recall it, that Brooklyn stock was just opposite a pier that we had leased at the foot of Fifth or Sixth Street, in South Brooklyn on the Gowanus Canal, and one of our men could stand on our own dock and see a great many trucks that were coming over there.

Q. What did they do with regard to the trucks? Did they get the license number and identify them that way, or what?

A. Ordinarily you don't have to. It has a sign there on the side of the truck that the average person could not misunderstand.

Q. In some cases it was necessary to get the license number and identify it that way.

The Witness: I really don't know. It is possible that maybe there was an unmarked truck came up there, and they took a license number down. Usually it did not mean anything.

6558 By Mr. Wooden:

Q. You are basing your statements here, I suppose, from the recollection of the reports received from your salesmen, are you not?

A. That is true, but after all that is quite a long while ago. My recollection is, I believe, as good as the average person, but it is not infallible.

Q. Did you make available the information obtained by any of your salesmen to any other cement manufacturer?

A. Not to my knowledge; no, sir.

Q. Did anyone in your organization make it available?

A. Not to my knowledge, no, sir.

Q. Did there come to your knowledge or attention any information originating with salesmen of other cement manufacturers?

A. Not to the best of my knowledge, no, sir.

Q. After you got the information from your salesmen about the identity of the dealers who were taking this foreign cement from the terminal warehouses, what did you do?

A. We decided whether or not we would apply our policy.

Q. Do you mean—

A. (Interrupting) To refuse to sell them when they came to us to ask for our cement.

Q. Did you get reports from your salesmen as to how much stock of foreign cement was on hand in these

6559 various terminal warehouses?

A. Not as a general proposition. The warehouses in most cases were on a covered dock. The best we could get would be the manifests of the ships coming in. It is pretty hard to get that, because it is closed off or fenced off with a watchman on the pier.

Q. I notice that Mr. McConnell in the instructions to salesmen, Exhibit 1132-C, instructs them to get information about stocks on hand maintained by importers.

A. That don't necessarily follow that they got them, however.

Q. That is what I am trying to find out.

A. Now, the Newark situation may have been different; I don't know. My recollection is that the amount of information that we got out of Newark was very small.

Q. How about Brooklyn?

A. And Brooklyn, I happen to be familiar with that myself. I went down and looked at it myself. You could hardly force you way in there with a jimmy.

Q. Did you ascertain how much of stock was on hand?

A. No, I did not.

Q. Did your salesmen send in a list of dealers to whom shipments should not be made because of their handling of foreign cement?

A. In the first blush of enthusiasm, they did; but
6560 after a while they began to realize that they started to lose customers, and then we began to run up against some real difficulties. They would not report it after they found it.

Q. How long did your policy of refusing to sell dealers who handled foreign cement remain in effect?

A. About three years, I would say, although we have never really abandoned it. We still think it is pretty good today.

Q. I am showing you papers marked 1132-D to H; inclusive, for identification. Will you identify them as authentic copies of correspondence between your organization and dealers on the subject of foreign cement?

A. (Examining papers) Yes, I recognize those.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: Your Honor, with reference to 1132-D, F, G and H, these are all letters which have to do with the exercise by one respondent of its right to refuse to sell to one dealer. There is no evidence of conspiracy shown, and we object to that series of exhibits on that ground.

6562 New York City,
May 18th, 1938

6566 Examiner Norwood: These are letters from and to the Lone Star Cement Company, indicating their refusal to ship to dealers who handled imported cement; and those things, taken alone, would indicate something that the cement company had a right to do, but if done by

agreement with others or in other circumstances which might be shown, might be unlawful and might indicate collusion.

Mr. Leisure: That was the point of my objection, that the complaint charges collusion as to the subject matter of these letters and these letters do not show or tend to show any collusion whatever. The point of my objection is that until that be shown these letters are inadmissible.

Examiner Norwood: The Government undertakes to make that connection, and I shall admit the exhibits pending their doing so. They are received as qualified.

(COM. EX. 1132-D, E, F, G and H was offered and received in evidence.)

6567 JOHN F. NEYLAN, previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Wooden:

6570 Q: You did decline to sell certain dealers to whom you had been selling?

A. No, sir; we did not sell any of those companies any cement to speak of for quite a long time. They were 6571 not handling any cement of ours.

Q. When they wanted to buy from you you refused to sell?

A. We certainly did.

Q. How about J. P. Duffy Company; hadn't you sold them before and refused to sell them afterwards?

A. We had sold them years ago, but for a long time we had not sold them any cement at all.

Q. Didn't you refuse cash orders from them?

A. Yes, sir.

Q. At the time you had this policy in effect?

A. Yes, sir.

Q. Did you have some dealers come to you and seek to buy, who were handling foreign cement, and give as a reason that other manufacturers would not sell them?

A. Not to my knowledge, no. We did not care what other manufacturers were doing.

6572 Q. Referring to page 6560 of yesterday's record, you were asked how long your policy of refusing to

sell dealers handling foreign cement remained in effect, and your answer was: "About three years, I would say, although we have never really abandoned it. We still think it is pretty good today." Do you mean that it is your policy today to refuse to sell dealers who handle foreign cement?

A. We have not to my knowledge put that policy into effect since, I believe, 1935. Probably the choice of words there is a little unfortunate. I meant that we never repudiated the policy; we may have abandoned it temporarily.

Q. You say you have not had it in effect since 1935?

A. That is to the best of my knowledge and belief. I don't recall any.

6573 Q. Were there some circumstances at the particular time which led to your adoption of that policy late in December, 1932, that had not been in existence prior to that time?

A. Well, we had been thinking about it for some time, as I recall it. There were one or two dealers in Brooklyn that had started to sell a lot of foreign cement to the exclusion of our cements, and it was decided that that was the time to put the policy into effect; that is, to actually place it into effect.

Q. How many of your dealers were handling the foreign cement at that time?

A. Well, to the best of my knowledge and belief there was only one.

Q. One where?

A. Brooklyn.

Q. I am speaking of the whole Metropolitan District, and also I would like to have you answer as to the New England territory.

A. Well, in the Metropolitan District, I would say there were probably only—I think there was only one of our real dealers that had really handled our cement. I don't know, I am not sure of that, of course. In New England, I don't know,—I am not as closely in touch with New England; there were quite a few of them there.

6574 Q. Who was the one you refer to?

A. J. P. Duffy Company.

Q. Was not the Brooklyn Builders Supply Company one?

A. They were never a customer of ours.

Q. How about the N. Ryan Company?

A. I don't know whether they were handling it at that time or not. I doubt it. They did later on, I believe.

Q. How about J. P. Callahan in New Jersey?

A. Well, I would not call Callahan one of our customers, either.

Q. When you say that these dealers that I have named were never really dealers of yours, what do you mean,
6575 that they never handled your cement?

A. I could not say that the Brooklyn Builders never handled our cement, but he was never a regular customer of ours, and as far as I know the J. P. Callahan was not. We may have sold him a little bit here and there on a job that a contractor or an owner probably insisted on our brand of cement.

Mr. Wooden: I should like to offer at this time, your Honor, an exhibit previously identified and marked 286-J. I will show it to the witness.

By Mr. Wooden:

Q. Do you recognize that, Mr. Neylan, as one of your circulars putting into effect special prices to meet foreign competition?

A. I do

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: I am not interested in any exhibit of that type.

6577 (COM. EX. 286-J was offered and received in evidence.)

Q. Did other companies put out similar announcements at that time, Mr. Neylan?

A. I don't recall. Yes. Let me change that. I think they did. I think we picked some of them up in the field.

Q. Do you know which one was the first to do it?

6578 A. Well, my recollection is that the first notice we found, actual notice in the field, I think, was issued by North America. I am not sure about that. That is my recollection. Of course, this was also during the period, as I recall it, of the Voluntary Code Filing; that was filed with the Institute as a condition of sale, according to my recollection.

Q. In July, 1935?

A. I think so.

Q. Can you say whether or not the announcements put

out by other companies were in substantially the same form as to all of these terms and prices?

A. I cannot say that definitely. The announcements will speak for themselves. I will say that I don't think we tried to go any further than anybody else that we found.

Q. Had you seen the announcements of other companies before you issued this?

A. According to my recollection, I think we did.

Q. Do you remember which one you saw?

A. I think I saw North American.

Q. Any others?

A. I don't recall. That is the one that sticks in my memory.

Q. Did you see any Lehigh?

A. I don't recall it.

6579 Q. What was the idea in restricting these prices and terms to certain counties that you named in the circular?

A. That is what we found, and that it what we were meeting. We were not axious to extend it.

Q. And you didn't want your dealers to extend it beyond the boundaries of those counties either?

Mr. Leisure: If your Honor please, what he wants the dealers to do has no—

Examiner Norwood: I rather think that answer is included in the other, but he may answer it.

A. I don't think what we wanted our dealers to do had any bearing on it. What we wanted in meeting that condition was to keep it confined as much as we could. We did not want to have that low price extended all over creation.

Q. Didn't you announce that you would refuse to sell dealers who sold it or used it outside of certain specified counties?

A. I think we did—in other words, meeting the situation that we found—my recollection is that our notice is almost identical with what we found in the field.

Q. What difference did it make to you whether the dealers sold it outside of those counties or not?

A. It would be a difference to the extent that the low priced cement would go out to the other counties and probably have the effect there of making the price
6580 there as low as it was in Brooklyn, which we did not want.

Q. You mean reacting and reflecting itself on the price charged to the dealer?

A. No, sir; reflecting on our cash book.

Q. That would come through the price paid to the dealer, wouldn't it?

A. Naturally, what he gets for it.

Q. In Exhibit 286-J, your circular, you refer to your barge captains having a list of dealers approved by you. Were dealers handling foreign cement included in the list approved by you?

A. They were not.

Q. All of these arbitrary prices to meet foreign competition, aren't they what is known as spot prices, not applicable to contracts?

A. Not in all cases, no. There are probably one or two cases where that was tried, but it never stood up.

Q. To make them spot prices only?

A. We did that, I think, in Boston at one time, in meeting that condition over there.

Q. That was true here, wasn't it, in the Metropolitan District?

A. It might have been, but my recollection is that it did not last any length of time; it broke down of its own weight.

6581 Q. Did there come a time shortly after this announcement of July, 1935 when the price, special price and terms, were thrown open to all dealers, regardless of where located?

A. I believe that is true.

Q. Did that apply to dealers in New Jersey? And in Connecticut?

A. I don't think that there was any limitation placed on it.

Q. What was the occasion for that being extended to other areas than originally stated?

A. Oh, I don't know that I can answer that fully. I think it is more probable that we found that cement going out into other territories.

Q. Was it being trucked into other territories by dealers from the special price territory, to the higher price territory?

A. Not necessarily by dealers.

Q. Was it being trucked?

A. Yes, it was being trucked out there.

Q. And sold in the higher price territory at less than the going price there?

A. Probably so.

Q. If the dealers didn't do that trucking, who did it?

A. Truckmen.

6582 Q. Did they become traders in cement?

A. No. As I recall it, some of the outlying dealers would probably make a deal with some of the dealers in the immediate area, and they would send their truckmen in. They would go down to this fellow and pick up an order and then come to our dock and hand in the order which we thought was going to a dealer in the immediate vicinity of the dock, and then found out, Heaven knows where, Connecticut, Western New Jersey, or some other points.

Q. How long did that condition last?

A. I really don't know. I think it went out in the latter part of that same year.

Q. Did you put out announcements withdrawing those special prices and terms, just like you had inaugurated them in July?

A. I think we did.

Q. Did the other companies do the same thing at the same time?

A. I think they did. I think, as a matter of fact, that is what led to our putting it out, and we were very happy to take it out.

Q. Who took the lead in taking it out?

A. I really don't know who put the first one out.

Q. Can you state whether or not it was Lehigh?

A. I don't think it was.

6583 Q. Or whether it was North American?

A. It might have been. I cannot say definitely.

6584 Q. Did you see any announcement by Penn-Dixie dated July 12th, the same date as yours, giving these special prices in certain areas?

A. I don't recall it by company name, no, sir.

Q. Did you see any by Universal Atlas on the same date?

A. I don't recall. The only one that really registers to me is the North American. I think that was the first one we found.

Q. Did you see any by Lawrence?

A. I don't know.
Q. Vulcanite?
A. I don't know.
Mr. Leisure: Do you mean issued the same date, Mr. Wooden, or—
Mr. Wooden: (Interrupting) Yes.
Mr. Leisure: (Continuing) Or effective the same date? Issued the same date?
Mr. Wooden: Yes. I offer at this time, your Honor, exhibits previously identified and marked 286-E, F, G, H, and 286-A and B. They are copies of papers from the files of the Lone Star Company.
By Mr. Wooden:
Q. I will ask you, Mr. Neylan, if you recall them?
A. (Witness examining papers) They look all right to me.
Examiner Norwood: Do you offer those in evidence?
6585 Mr. Wooden: Yes, your Honor.
Examiner Norwood: Is there any objection?
Mr. Leisure: No objection.
(COM. EX. 286-E, F, G, H, and A and B was offered and received in evidence.)
Q. I notice in Exhibit 286-F, Mr. Neylan, that you instrfucted your representative at Albany that the so-called arbitrary prices were for immediate delivery only, and that your normal price based on mill plus actual freight was to be used when contracts were taken?
A. That is correct.
Q. You had then, two delivered prices in effect at a given point, depending upon whether it was taken for immediate delivery or on a contract basis.
A. We gave the dealer the opportunity of buying from day to day as one price, or getting contract protection at another price, and that was the condition that we found in the field.
Examiner Norwood: Was your competition there all in immediate delivery of cement?
The Witness: Yes, that was our immediate competition.
6586 By Mr. Wooden:
Q. You mean the foreign cement was for immediate delivery?

A. As a general rule, it all is. These quotations that we found there very clearly showed that that was the basis on which those lower prices were quoted.

Examiner Norwood: Did they ever sell imported cement for big contracts like bridges, and so forth?

The Witness: They have in one or two instances, but generally speaking it is a day to day proposition. We have, however, had some cases where they sold on a contract basis. We do not know the terms, however, under which it was sold.

By Mr. Wooden:

Q. There is usually in addition to the tariff, some differential imposed by public purchasing agencies in favor of domestic cement?

A. Not in all cases, no, sir. I know of many instances where they have bought foreign cement where there was only a difference, as far as I could check, of one cent a barrel. And I refer specifically to the State of South Carolina.

Q. In very recent years?

A. Yes, sir.

Q. Doesn't the W. P. A. have some policy favoring domestic cement by a certain percentage over the 6587 price of foreign cement?

A. They may have, but again I get back to South Carolina. My recollection is that they would buy it on a difference of a very few cents, and I was just trying to rack my memory as to whether or not we did not have cases where they paid more for it.

Q. Some reference is made in Exhibit 286-G to reduce prices in eastern Massachusetts and Rhode Island and New Hampshire, bringing up again the old question of diversion. Is that a similar situation to the one you described in the Metropolitan area of New York where trucks or dealers took cement out of the territory where the low arbitrary prices prevailed into other higher-priced territory?

A. No, sir, they usually diverted the cars in transit. We maintained no stocks at all in the Boston area.

Q. But aside from that, it was the case of taking the cement out of the low-priced arbitrary area into the higher-priced, and underselling the parties there?

A. It was diverting cars originally consigned to the

lower-priced territory into points where the prices were higher. In some cases, not in all cases, however.

Q. And underselling the price in the higher-priced territory?

A. That does not necessarily follow, because there are—

Q. (Interrupting) But it sometimes occurred?

6588 A. Yes, it sometimes occurred; and sometimes they would divert a car not for the sake of price, but for the sake of getting cement into a place where we would not ship them, and there is no secret about that.

Q. Has there been some trucking out of the low-priced arbitrary-priced area around Boston into higher-priced territory?

A. There may be some. There is not so much on the domestic cement now as there is on the foreign.

Mr. Wooden: I offer at this time, your Honor, papers previously identified and marked 286-N, HH, a list of prices applying at various points in Massachusetts, New Hampshire, and possibly other States.

By Mr. Wooden:

Q. Do you recognize that, Mr. Neylan, as coming from your files?

A. (Witness examining paper.): Yes, I have seen this before. However, we did not prepare it ourselves in the New York office.

Examiner Norwood: Do you offer those?

Mr. Wooden: Yes, your Honor.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: No, except the one as to the general line; that is all.

6589 Examiner Norwood: Received as marked.

(COM. EX. 286-M to W was offered and received in evidence.)

By Mr. Wooden:

Q. Did you have dealers located at each of the towns included in that list, Mr. Neylan?

A. I don't know. There are very few towns in Massachusetts and Connecticut, New Hampshire and Vermont, I think—not so much in Vermont—but in Massachusetts, where there are no dealers. Comparatively few.

Q. Where there are no dealers?

A. Yes. There are dealers in most of those towns.

Q. I am referring to whether you had dealers in the towns listed?

A. I don't know. Any place there is a dealer, we solicit, we will call on him and try to get some of his business.

Q. Is Exhibit 286-N to HH a list of arbitrary or special prices to meet foreign competition?

A. As far as I know—I don't know that they are all of that category. There may be towns in there that are based on Hudson or some other place. I would have to check every one of those towns and check them as to the prices in effect at that time.

Q. You ordinarily do not get out a list of all de-
6590 livered prices in all the towns that you sell or solicit business in, do you?

A. No, as a general rule we do not. However, there are places where you have lower-priced territory contiguous to higher priced territory where you would put that out for the benefit of the salesmen; in other words, you include in the list some of the points that would be figured in a normal way.

Q. Who prepared that list?

A. I don't know. It was prepared in the Albany office and sent to us.

Q. Your Albany office?

A. Yes, sir. As a matter of fact, we have such lists dating back to 1926, and have had them from time to time.

Q. Mr. Neylan, will you submit a list of New Hampshire towns in which your company solicited business in November, 1935?

A. I don't know that I can do that, Mr. Wooden. We solicit business in every town in New Hampshire; I will make that statement right now. There is no town in New Hampshire that has not got at least somebody in there that is not interested in cement, whether he be a local councilman, or the head of a local town government, or village government. We make it a point to call on not only
6591 dealers, but contractors, engineers and even the station agents in many cases, because that is a source of information that we are always interested in getting.

6592 Q. Are the special prices, or the prices in Exhibit 286, in effect today in the same territory?

A. I really don't know. This is 1935? I don't know. There may be some adjustments in there, and there may be places where the price we are carrying is wrong.

Q. What do you mean by the price being wrong?

A. In comparison with somebody else's. They may have a lower price in there. We try to check that as we go along, and as a result there are changes being made all the time.

Q. You might possibly be wrong by having a lower price?

A. In some cases, yes, but those are the cases we never find out. We would be doing a big business there.

Q. What is the basis on which the so-called arbitrary prices are made up?

A. I don't know, Mr. Wooden, how those prices are made up. We did not put them in.

Q. Did you ever put arbitrary prices in yourself?

A. Yes, we have.

Q. Well, how do you go about it, in deciding what they shall be?

A. Well, it depends on the territory involved. We put some prices in in 1926, and my recollection is that we put a flat price in within the entire switching area in Boston, so we made no check there; in other words, 6593 there was only one price in that whole area. Then we put the prices in down around Washington, and there we had graduated the scale at Washington, and I will be frank with you, that in putting those prices out we put prices out which, in our opinion, would influence the cement moving out of Washington rather than carload lots from the mill.

Q. Will you provide the basis on which the so-called arbitraries out of Washington are calculated?

A. I cannot do it. I put them in myself, and for the life of me I cannot tell what basis I used for it. I simply took a list of statements and tried to graduate a price out on a basis that in my opinion would actually make it possible to truck cement out of Washington into those areas, because that was what we were interested in, increasing the size of that business in Washington.

Q. Will you provide the schedule or list of those arbitrary prices in the places applicable?

A. I will be glad to.

Q. As they were originally put out?

A. If I have them, yes, sir.

Q. Do you mean by that that there is not any system or logic in making an arbitrary price?

A. It all depends on the logic of the man that makes

them, Mr. Wooden. I am giving you my experience
6594 with the prices that we put in.
6595 Q. You do not quote your arbitrary prices when you quote to the Government, do you?

A. Any place that we quote the Government, we give them the price that is in effect at the point where the quotation is asked for. We do not quote the Government a higher price than we quote anybody else, never.

Q. I show you, Mr. Neylan, these papers, previously marked and identified as Exhibits 286-C, D and K, and I will ask you if you recognize them as announcements or communications of your company?

A. Yes, sir.

6596 (COM. EX. 286-C, D and K was offered and received in evidence.)

Q. At the time of this period in 1935 indicated by these recent exhibits, you were filing notices of your arbitrary prices with the Institute?

A. That is my recollection of it, yes.

Q. Did the Institute circulate lists of the arbitraries during that period?

6597 A. They did; they followed the same procedure that was followed during the Code period, according to the best of my recollection.

Mr. Wooden: Your Honor, it has been called to my attention that Exhibit 286-X to HH is a duplicate of 286-M to W, therefore I wish to withdraw 286-X to HH. They were clipped together and not carefully enough examined to notice that duplication.

Mr. Leisure: No objection.

Examiner Norwood: Let the record show that it has been withdrawn. The record will show the previous reception of 286-M to W to exclude therefrom the ones just mentioned.

By Mr. Wooden:

Q. Mr. Neyland, is your Hudson base at present $1.75 stripped?

A. $1.75 base and cash discount, stripped.

6598 Q. What is the price stripped in the New York Metropolitan area?

A. (Witness makes computation.)

Mr. Leisure: Didn't we cover this last question yesterday?

Mr. Wooden: I didn't think it was clear.

The Witness: To the best of my knowledge, $1.74. That is before cash discount.

By Mr. Wooden:

Q. Both on the same basis?

A. Yes.

Q. Comparable basis?

A. Yes.

Q. And your freight from the Hudson is what?

A. I believe the rail freight into New York City is 42 cents.

Q. The same as from Lehigh?

A. I think that is true.

Q. You withdrew these special prices in December, 1935, in the Metropolitan Area of New York. How long did that continue, how long did that condition continue before you restored some arbitrary prices?

A. I don't know. I would have to look at the record.

Q. Can't you approximate it?

A. No, I really can't.

6599 Q. You can't say how long the present arbitraries have been in effect?

A. No, I can't recall it.

Q. Will you ascertain that?

A. Yes, I can get that record very easily.

Q. Do you know who took the lead in the present arbitraries, in this district?

A. I am not sure.

6600 Q. Will you identify a paper I show you, marked 1133, as an authentic copy of a communication from the files of your organization?

A. (Witness examining papers.) Yes, sir; I do.

6601 Mr. Wooden: I offer them in evidence.

Mr. Leisure: I make the same objection that I made to the previous exhibits, that is, incompetent, immaterial and irrelevant, and hearsay. It is a letter from a local sales manager expressing certain opinions, and it does not seem to me that they should be binding on the other respondents in the case. I have the very distinct objection that it is not material to any of the issues.

(COM. EX. 1133 was offered and received in evidence.)

Q. My Neylan, has there been at any time in any of your mills a participation in the respective districts or any of the respective districts where they had a participation in any allocation of business with other mills?

A. Not to my knowledge, no.

Q. Does your answer apply to each and every mill and each and every district in which you operate?

A. So far as I know; yes, sir.

Q. Have you at times shipped for the account of other mills?

6602 A. At times, yet.

Q. Have other mills at times shipped for your account?

A. Yes.

Q. What are the conditions under which that has been done?

A. Well, I don't know generally what prompted the other fellow to ask us to make shipments for him. His mill may have been down, or his mill may be shut down completely. As a matter of fact, there may be a strike. I know in our case, in one or two cases, we have had people ship for us during construction periods when we were not able to ship ourselves.

Q. Has there been any shipping for the account of other mills and vice versa in order to reduce the amount of cross-hauling?

A. Not to my knowledge. I don't recall any.

Q. Was the matter of allocation of business considered specifically in districts 1 and 2 of the Institute?

A. Not to my knowledge, no, sir. I was always charged to go out and get all of the business I could get. Sometimes we made a good job of it, and other times we did not.

6612 *Cross Examination by Mr. Leisure.*

Q. Mr. Neylan, Mr. Wooden asked you this morning something about whether or not you had refused any cash orders from Mr. Duffy. Do you recall that?

A. I do.

Q. Did you have any conference with Mr. Duffy at that time as to whether or not he had been in contact with the Federal Trade Commission before he made cash offers to you?

The Witness: I have a recollection of such a statement from one of them, yes, sir.

By Mr. Leisure:

Q. You testified on direct examination the other day

that about 1925, Lone Star increased its package differential. Will you explain to the Examiner what you mean by "Package differential"?

A. I am not so sure about the date; I think it was about 1925 or thereabouts. What fixes it in my mind is that it was shortly after Mr. Koch first came to New York. We put out quotations throughout the territory which increased the charge or the deposit on the cloth sacks from
6613 the customary ten cents, that is, that we had been charging prior to that time, to fifteen cents each, with a fifteen cent allowance, of course, when the sack was returned.

Q. That was what you meant by "package differential"?

A. Yes.

Q. I think you also said at or about the same time in the testimony that you had to withdraw that because your competitors did not follow, is that correct?

A. We had to withdraw it. None of our competitors followed it, according to my recollection, and we were constantly getting complaints from our dealers that our price was too high and they would not buy from us.

Q. Do you mean by that, Mr. Neylan, that you found it necessary to sell your cement as cheaply as other companies sold theirs?

A. We have to try to at all times.

Q. That is, you have to equal your competitors' price if you want to sell?

A. At least equal it.

Q. You told Mr. Wooden what happened when you raised your price as you suggested, by your package differential. What would happen if one of your competitors quoted a lower price than yours, if you wanted the business?

A. We would have to meet it.

6614 Q. That is, whether you raised your price or a competitor lowered his, sooner or later the prices would be identical in a given market, is that correct?

A. They would have to be if you wanted to participate in the business.

Q. If you both stayed in business?

A. That is right.

6617 Q. The examiner asked you at page 6062 of the record: "Locally, do you sell at your base price?",

and I believe you answered "Yes". Will you explain to what extent that is so?

A. Did I say that?

Q. I thought you did; I am not sure.

A. I certainly did not mean it. We sell at destination prices in practically all cases. There is an element of freight in practically every quotation we made, certainly to dealers and to contractors. The only possible exception could possibly be to railroads where we sell them right at the mill.

Q. In stating to Mr. Wooden that you meet the price of your competitors, did you mean that you meet the base price or the destination price?

A. We meet the price at destination in all cases.

Q. The market price?

A. The price at the point that we are trying to
6618 get that business.

6620 Q. You told Mr. Wooden that in some places your company meets your competitors' prices because it knows their method of making their prices. That is page 6040 of the record. Will you explain what you meant by knowing their method of making prices?

A. Well, it is conceivable that in some places we may not be able to pick up a direct quotation from one of our competitors, but we have picked up quotations at adjoining places, maybe the next town or the town beyond, and they all check back to some starting point at some one of their mills, and we assume that the price at the point where we have not found the quotation would be based on the same method.

Q. Do you sometimes merely meet your competitors' price when you pick up prices in the field?

6621 A. Yes.

Q. Without doing any figuring?

A. Oh, yes, there are many places where we meet a price—where we find a price and meet it. There are some places we cannot, and figuring back would not do you any good.

6622 By Mr. Leisure:

Q. Mr. Wooden has asked you several times whether you did any better, what, according to your experience would happen if you did any better, if you did more than meet your competitors' price.

A. Our competitors would meet our quotations instantly.

Q. So the final result would be the same?

A. Exactly.

Q. That is, if you both stayed in business?

A. Yes, if you wanted the business.

Q. Now, on this subject of arbitraries, on page 6042 of the record, what do you mean by an arbitrary price?

A. Well, I think that I made some comment on the term "arbitrary." I don't like it myself. It always struck me as being a term that indicated that there was just no rhyme or reason for a price being in there.

Q. Those special prices, I think you said, are made to meet foreign competition?

A. I think, "special price" is a better term. It is more descriptive of the prices we generally find or make.

Q. Now, on the subject, Mr. Neylan, of base mills or non base mills, and Mr. Wooden's request early in your testimony, you named quite a list of non-base mills.

A. I did.

Q. I think you said that some of these might say
6623 that they were basing point mills. Did these mills change their status from time to time?

A. Well, in making that list, in calling off that list, I merely worked from memory, as to the condition that we find now; but over a period of years, any number of those mills that I now cited as non-base mills, were base mills, and there are some mills today that are base mills that were non-base mills.

Q. In other words, non-base mills sometimes become base mills, and vice versa?

A. Yes, sir; and vice versa.

Q. Is there anything to prevent any mill from becoming a base mill or a non base mill if it chooses?

A. Not to my knowledge.

Q. And these changes do occur?

A. They do occur and have occurred quite often in the past.

Q. It think it already appears in the record that there are some sixty basing point mills in the country. Will you consider that a fair estimate?

A. I think so.

Mr. Leisure: Your Honor, at the time Mr. Wooden offered their Exhibit 1113-A to C, a letter to Governor Hor-

ner of Illinois, there was another letter which preceded that and which I had marked for identification.

6624 Respondents' Exhibit No. 22. I would like to offer that letter in evidence at the present time.

Mr. Leisure: The one I am offering is the one which preceded the one which was offered by the Commission. He offered one letter, your Honor, addressed to Governor Horner.

6625 (RES. EX. 22-A and B was offered and received in evidence.)

Mr. Leisure: There was another exhibit, marked Commission's Exhibit 1131-G to I, which referred to a meeting attended by one of the Lone Star salesmen. I have here another letter, also in the hands of the Com-

6626 mission, dated December 19th, 1930, which relates to the same matter and which, I think, should have been offered by the Commission.

I offer it at this time, because it gives the true picture, and the single letter as offered by the Commission, in my opinion, does not give the true picture.

(RES. EX. 23 was offered and received in evidence.)

6627 Q. Mr. Neyland, Mr. Wooden asked you about base control. I think you stated that the base at Hudson governed all the territory half way to Buffalo, in New York State. Is that correct?

A. I was assuming there that the base price at Buffalo being the same, to the best of our knowledge, as Hudson, and with both mills operating in the same rate scale territory, that they would meet about half way.

Q. Has that always been true?

A. No; and it may not be true now. That was just my hasty conclusion as to what would happen if those two mills were involved, but it is possible that the Lehigh Valley may come up in there and interject itself between those two mills.

Q. Is there a hard and fast line, or does it fluctuate?

A. Oh, no. It depends entirely on the combination, the mill bases, or whatever you want to call it, plus the freight in effect at these various times. There was a time, so far as I can recall, and that either Buffalo or Painesville came all over into New England, right through to the Hudson base.

Q. When you say "No," you mean there is no
6628 hard and fast line?

A. That is right.

6629 By Mr. Leisure:

Q. When we adjourned for luncheon, Mr. Neylan, we were talking about base controls, and I think that you had just told us that this line that you described as being half way between New York and Buffalo as not being a fixed line, that it fluctuated at different times, is that correct?

A. That is true.

Q. Is that true of the territory governed by your other mills? Does the same principle apply?

A. Yes, to a very large extent. There are times when our mill price or mill base or price base or whatever you want to call it, determines the price in the territory that varies widely as to extent.

Q. Now, I asked you to give us some estimate of the number of so-called basing points before luncheon, and during the luncheon period, I checked over an exhibit that was put in by the Commission, being a list of basing
6630 points furnished by your company to the Commission, in 1931, and I counted up some seventy on that list. So, again, is the list of basing points some fixed number of points or does it fluctuate?

A. It varies from time to time. As a matter of fact, I am not sure that the list that we prepared carries all the points.

Q. As a matter of fact, it does not cover anything on the Pacific Coast, does it?

A. I believe very few west of the Rockies; I don't believe their Utah mills or any of those have been considered.

Q. In other words, you may consider a mill a mill base point, and someone else might consider it not a mill base point?

A. That is possible.

Q. Is there anything as such as a fixed list of that kind?

A. Not to my knowledge; I never saw it.

Examiner Norwood: What does a mill do to become a basing point? Assuming that it is a non-basing point, what does it do that makes it a basing point?

The Witness: All it has to do is to issue quotations using whatever figure they may arrive at.

6631 Examiner Norwood: Using their mill as the point from which to calculate freight?

The Witness: That is right. That has been done time and time again.

Examiner Norwood: Before that, it calculates from some other mill, does it?

The Witness: Either that—I don't know how they arrive at it. They may in many cases just meet the prices that they find in those towns.

Examiner Norwood: Does it notify anybody of those prices besides the customers?

The Witness: Not to my knowledge.

Mr. Zimmerman: May I ask, Mr. Examiner,—isn't it just a matter of assuming price leadership?

The Witness: You could call it that. They decide to issue their own prices.

Mr. Leisure: That was to be my next question, Mr. Neylan. As far as your own mills are concerned, I think you said they were base mills. Do you mean by that that is territory in which you exercise price leadership?

The Witness: That is right. That is where we issue our own quotations based on our own mill.

By Mr. Leisure:

Q. And it follows that a non-basing mill meets
6632 competition, but does not exercise price leadership?

A. Right.

6634 Q. On the subject of price cuts, Mr. Wooden asked you—at page 6194 of the record—

6635 "I thought everything in the cement industry with regard to price was done openly, in the open?" and you answered that question. And then Mr. Wooden asked you the following question:

"That is, the publicity that is put out, that it is all done in the open?"

Mr. Neylan, do you know of any publicity ever put out by any member of the cement industry to the effect that price cuts were done in the open?

A. I certainly don't.

Q. Now, in response to the question which I just read to you, you replied to Mr. Wooden:

"Price cuts are not made in the open, any more than any other crime is committed in the open."

Do you recall that?

A. I do.

Q. Is it your understanding that price cutting of the kind you were speaking of is illegal?

A. Yes. I feel that—according to my understanding of the Robinson-Patman Act—it is certainly a violation of the Robinson-Patman Act.

Q. I think I stated in one of my objections, that such price cuts were illegal, is that what you meant when you compared price cutting to a crime, that it was something illegal?

6636 A. It is.

Q. I don't want any confusion on the record between the price cuts and price reductions. Would you consider it illegal for a company to reduce its price?

A. No, sir; I consider that any company has a perfect right to reduce its price any time it wants to; and we feel the same way about it.

Q. You feel that that is an entirely different thing from a company publishing one price and selling to part of its customers at another price?

A. That is right.

Q. Now, on the subject of these new procurement bids that Mr. Wooden discussed with you, I think you testified that in 1926 your company tried to sell to the Government f. o. b. mill, and did not succeed. Is that correct?

A. That is true; prior to that time too.

Q. I think you said that you finally abandoned the idea of quoting f. o. b. mill prices to the Government as being a useless gesture, or some such language as that.

A. That is right.

6637 Q. That is, the Government did not want to buy at the mill?

A. I have never seen any evidence of the Government wanting to buy at the mill. They want to buy at destination in all cases.

Q. Now, Mr. Wooden said while dealing with this subject, he asked you whether or not you did not know that the Government is now seeking to buy f. o. b. mill. Do you recall that?

A. I do.

Q. Mr. Neylan, even in the case of these new offers that have just recently been made, isn't it a fact that the Government states in the offer itself that they will award on the basis of the cost to destination?

A. They have stated in their proposals—I am not so

sure about the present proposals that are out now, but in the past proposals, I have not seen but very few of the recent ones—

Q. (Interrupting.) Ones that have recently been made, the ones that were opened on Good Friday?

A. It had in there a provision that the award would be made based on the considerations, as I recall it, which would indicate to the Government the most attractive price, and I take that to mean that they would figure their price to destination in all cases. That has been
6638 the basis on which they have always awarded the business, and we have had any number of tabulations from the Government officers themselves showing that that was their recommendations when they forwarded it to Washington, or made the award.

Q. That is, that the lowest destination price would govern as far as the Government is concerned?

A. That is the thing that governs.

Q. Do you have any reason to suppose that in these new cases that are now being let, the Government will change its policy as to that?

A. I do not. I do not see how they can.

Q. If the Government figures its cost price at destination, would you like to figure your sale price at the same spot?

A. Certainly. I want to have an opportunity of making my price at the point where they consider their cost in making the award.

Q. Of what benefit would it be to you to quote a price on a Staten Island Ferry, when the market was in Washington, D. C.?

A. It would not be of any benefit to us at all.

Q. Is that the customary and ordinary practice of your company to submit destination prices?

A. In all cases; practically all cases.

Q. Now, Mr. Neylan, would you consider a law
6639 fair or just or equitable that compelled you to figure your sale price at one place, and allow the Government to fix its cost price at another?

A. I would not; no.

Q. I think you have said you consider destination price and market price to mean the same thing as far as you are concerned.

A. That is right.

Q. Now, as to price changes, I think you told Mr. Wooden that you sent out notices of changes to your customers?

A. We do.

Q. And to prospective customers?

A. We do.

Q. Do you send them to anyone else? Do you send them to your competitors?

A. We do not. We may send them to some contractors in connection with which we may have previously bid a job or something of that kind.

Q. But it is always looking forward to the hope of having some business that causes you to do it, is that correct?

A. That is right.

Q. Now, taking up the subject of diversions which Mr. Wooden discussed with you at some length, I think you told the Examiner that you considered them to be dishonest?

A. I do.

6640 Q. I think you said for one thing you considered them to be a breach of contract?

A. It is.

Q. And quite aside from that, how do your dealer customers react to diversions?

A. Well, they do not react very favorably.

Q. Could any cement company remain in business long without dealer customers?

A. I don't believe so.

Q. Over the period of time that you have been in the cement business, where does the bulk of your business come from?

A. The dealer business is the backbone of our business.

6641 Q. Now, with regard to filed prices, Mr. Leylan, do you have any filed prices at the present time?

A. No, sir, we do not.

Q. Have you had any during recent years?

A. No, sir.

Q. For the last three years, for instance?

A. No, sir, I think the last was some time in the Fall or the latter part of 1935, I think.

Q. In the absence of competition, will you arrive at your destination price by adding freight to the base price?

A. We would.

6642 Q. Your usual method of transportation you add to your base price?

A. We do.

Q. Are there any exceptions to this policy?

A. Yes.

Q. I direct your attention to Washington, D. C., for instance.

A. Our price in Washington is based on our Norfolk price base or mill base, or whatever you want to call it, plus our cost of moving cement from the Norfolk mill to Washington, and that movement is accomplished by barge. Now, we have also quoted in some instances in Virginia and North Carolina, and also in Louisiana, using a water rate.

Examiner Norwood: Do you use the water rate then and the barge rate to Washington in making your quotations?

The Witness: Yes, we do.

6643 Q. Could a competitor sell cement in your territory at a higher price than you charge for your cement?

A. I don't think so.

Q. That is, he would be compelled to compete with you in price if he wanted to make any sales in that territory?

A. Yes, as a general proposition. I don't believe anybody would pay one of our competitors more for cement than he could buy it for from us.

Q. And by competing in price, do you mean as a matter of price competition, his price would have to be at least equal to yours?

A. At least equal to ours.

Q. In attempting to meet a competitor's price as you have described this morning, how do you find what a competitor's price is?

A. We locate the quotations generally in the field by contacting with dealers, or in some cases contractors. Our man wires it in or telephones it in to our division office, and in many instances they will pull some of their salesmen off the road and put them out in the territory to find out to what extent those prices have changed.

Q. And you have your choice then of meeting it?

A. Meeting it or withdrawing, and in some cases 6644 we have withdrawn.

Examiner Norwood: Have you found that in some cases the buyers will misrepresent the price to your salesmen?

The Witness: Yes, sir. I have one salesman who told me that this contractor was getting a price cut, and when I asked him, "How do you know," he said, "The Contractor admitted it." We do not take that kind of information; we usually look for the printed quotation. Now, of course, we have information of alleged price cuts turned in all the time from our men in the field.

Examiner Norwood: That is one process of bargaining with your men, isn't it?

The Witness: Yes, or alibiing for losing the order.

By Mr. Leisure:

Q. If you get the same answer from a number of different sources, then do you feel that you can rely on it?

A. We can rely on that information. We usually look for the printed quotation, and in most cases we have it. In practically every case, we have it or the division office has it.

Q. Suppose you went into a new territory where your competitors were already doing business, would the price at which they were selling cement in that territory be
6645 the market price?

A. It would unless we started a new mill or something of that kind.

Q. Set a new market?

A. Yes.

6646 Q. Is that one example of how you pick up information in the field?

A. It is.

Q. To save time, I show you a group of exhibits here—1121-D to K inclusive—and ask you if those are examples of how you pick up this information in the field?

A. They are.

Q. Now, several times, Mr. Neylan, during your direct examination, Mr. Wooden asked you how you accounted for the fact that certain documents were in your files, and you said you had never seen them before. Were they your files or the files of your company that you were talking about?

A. The files of our company, in all cases.

Q. Mr. Wooden also asked you if your destination prices were arrived at also by addition of land grant rates. Do you recall that?

A. I remember it, yes.

Q. Is the land grant rate which you figured the estimated land grant rate or the actual land grant rate?

A. Well, they are rates that are quoted us by the railroad companies, and I have always considered that the railroad companies had just as accurate an idea of what those rates were or are, as anybody else. Now, as a matter of fact, we have under several different conditions, gone back to the railroad companies, and asked them to develop
6647 through their audit office the basis on which final settlement was made, and I have in mind at least one or two cases of where they came back and told us that the settlement was made on identically the same basis as the rate that was quoted to us originally.

Q. At any rate, those are the rates that you do business upon?

A. Yes, sir.

Q. Amongst yourselves and the railroads?

A. Yes, sir.

Q. With reference to Mr. Wooden's suggestion that the apportionment of business, at least I took it that was the purport of the testimony, going back to this request for the bids in 1932, if you had been successful and had gotten that business in Indiana, Mr. Neylan, from what mill would you have shipped?

A. Naturally from Limedale, Indiana.

Q. And with respect to the bids covering the State of Illinois, in the same year, which you discussed with Mr. Wooden, under the same topical heading, where would you have shipped from, if you had been successful in those bids?

A. From Limedale.

Q. It is possible that any portion of it would have come from Bonner Springs, Kansas?

6648 A. Not under normal conditions, no.

Q. How far is Bonner Springs from the Illinois State line?

A. (No answer).

Q. Well, it is all the way across the State isn't it?

A. It is all the way across the State of Missouri, and my recollection is that it ought to be 250 miles anyway.

Q. And how far is your Limedale plant from the Illinois State line?

A. About fifty or sixty miles.

Q. So it would be cheaper to ship from Limedale?

A. Oh, yes.

Q. Do you know offhand what the capacity of your Limedale plant was at that time, approximately?

A. At that time, I believe we claimed a capacity there

of about three million barrels. Whether we could make it or not is an open question—I don't know—but I have heard Mr. Struckman say many times that was a three million barrel plant.

Q. What about the capacity of the Bonner Springs plant?

A. About one million three hundred thousand, one million four hundred thousand.

Q. In 1933, could you have taken the entire award of the Indiana requirements of 1,400,000 barrels, as I believe Mr. Wooden said—could you have taken care of that busi-
6649 ness if you had gotten it all?

A. Yes, I think we could.

Q. Well now, could you have taken care of it for both the State of Illinois and the State of Indiana if you had gotten it at the same time?

A. You mean the entire award there, three million barrels?

Q. Yes.

A. No; that would be impossible.

Q. Your capacity would have been big enough. Why couldn't you?

A. You mean that the amount would be—

Q. The entire order.

A. It would have been three million barrels in Illinois and one million four hundred thousand in Indiana; that is four million four hundred thousand; and our mill is only good for three million.

Q. Did you figure on your dealers in any way?

A. We always have to figure on our dealers.

Q. And I think Mr. Wooden brought out that you bid only on a portion of the business?

A. My recollection is that we bid a million in Indiana and, I think, a million in Illinois.

Q. Why did you bid only in certain counties in the State of Indiana?

6650 A. Well, we bid in all counties; we put a price in in all counties. Naturally, one of the considerations in limiting your bid to a specified quantity is to take care of your normal trade, take care of your dealer trade; you cannot afford to pass up your dealer trade for any State contract.

Q. Is that why you limited your bid then, in Illinois, I think, to a million barrels?

A. I think it is. I cannot conceive of bidding on three,

million barrels in the State of Illinois and passing up your day by day business with the dealer trade, after putting in the time, the effort and the money in building up that dealer trade.

Q. Would you or would you not have done that?

A. We would not do it.

Q. So then, Mr. Neylan, as I understand you, your partial bids were not the result of any arrangement with your competitors to apportion business. Is that true, or is it not true?

A. It certainly is not true, to the best of my knowledge and belief.

Q. That is, you did not agree with any competitors?

A. No, sir.

Q. The reason for apportioning the bids was that you wanted to take care of your dealer trade. Is that a fair statement?

6651 A. Yes, I think that is a fair statement.

Q. Now, Mr. Wooden suggested to you that when the price was unreasonable, that that invited competition in your own territory. He then pointed out that you had competition in your own territory. Is it possible to have competition in your own territory, even when your base price is unreasonable?

A. Well, I don't know of any way to keep your competitors out, if they want to come in and meet your price.

Q. And you consider your base price reasonable?

A. I think it is.

Q. Have you had such competition when your base price was below cost?

A. Well, that feature of "below cost" kind of bothers me. I don't know whether the base price was below cost or not, but I would say we never noticed any slackening of competition when the prices were very low.

6652 Q. Well, can you remember in all of your years in the cement business, any case in which you were the only manufacturer competing for business in any given territory?

A. No, I cannot.

Q. Mr. Wooden asked you yesterday,—he said if you were willing to accept $1.32 on business in competition with foreign cement, why were you not willing to accept that price for all of your business? Why do you feel compelled to meet the low price of foreign cement, Mr. Neylan? I am talking, of course, about millnet when I say $1.32?

A. Well, you have to maintain your identity in the market, particularly in those markets that are close to your plant and represent a potential, a large potential outlet. We have had some sad experiences on that. We have drawn out of markets when the prices were low, and it took us two or three or four years sometimes to get back in there and start getting some business from the dealers, and one of the most notable examples of that is Westchester County and Florida. You have to have business to run your plants.

Q. Is it or is it not a fact that there are a limited number of dealers in any market?

A. Oh, Yes.

6653 Q. So that you cannot be sure of getting them back if you lose them?

A. No, you cannot be sure of getting them back.

6655 Q. On this subject of uniform definition of the term "cement dealer," which you were being questioned about this morning, I think you stated both today and yesterday that your company had its own definition of what constitutes a dealer?

A. Well—

Q. (Interrupting) Let me state it differently. Your company made its own decision as to whether a dealer was a cement dealer?

A. That is right. I will make that statement very definitely, that we ourselves decide whom we shall sell as a dealer.

Q. I think you said without fear or favor?

A. Yes, sir.

Q. And you have made those decisions yourself?

A. Yes, sir, we have.

6656 Q. Well, is there any agreement between your company and other members of the company at the present time as to what shall constitute a dealer?

A. No, sir, I know of any number of places where other companies are selling dealers that we do not consider dealers; we would not sell them.

Q. On page 6215 of the record, the following questions were asked: "Did you telegraph the Institute regarding changes in the freight rates that you already have?" And the answer was "Sometimes we do." The next question read: "And telephoned," and the answer is "Sometimes —we have telegraphed and we have used air mail." Did you mean sometimes you telephone or telegraphed, be-

cause with the dash there, the sentence is not clear. What did you mean?

A. No, I don't recall any case where we telephoned them.

Q. You meant that sometimes you telegraphed?

A. That is right.

Q. And used air mail?

A. Or ordinary mail.

Redirect Examination by Mr. Wooden.

6657 Q. Do you believe that the wordings of the definition make them substantially alike?

A. The wording in some cases may be alike. As I said before, I have not seen all of their definitions, but I can say this, that even some companies whose definition I did see, I know of cases where they are selling people whom we would not sell as a dealer, so after all it is the interpretation of it rather than the definition.

Q. That is always a thing to be considered. Do you sometimes recognize as dealers those whom other 6658 companies do not recognize as dealers?

A. Yes, sir, we have some cases.

Q. Wherein does your definition of a dealer differ from that of the dealers' associations?

A. I don't know what their definition amounts to, Mr. Wooden. I really do not.

Q. You have seen their definitions, haven't you?

A. I may have in the past in some cases, but I don't recall them.

Q. Can't you tell us wherein your definition has differed from the definition of the dealers' associations?

A. No, sir, I cannot because I cannot recall their definition.

Q. You do not want to be taken as saying that it is different?

A. Well, I will make this statement right now without any fear of contradiction, that we have sold any number of dealers who were not members of any association of dealers.

Q. Do the dealers attempt to confine it to the members of their association?

A. In some cases they have, yes, sir.

Q. You consider some of the non-members just as much dealers as members?

A. Our standard rule has always been that re-
6659 gardless of a man's affiliations, so far as his societies or his dealer associations are concerned, it made no difference to us, in order to determine whether or not he is a dealer. We have paid pretty dearly for that in some places, but we have stuck to it nevertheless.

Q. You have always had this foreign competition in the New York market, havn't you?

A. No, no always.

Q. You have had it always since 1926?

A. I think there have been periods in between where the foreign has not bothered us. As a matter of fact, there have been lulls in between where little or no foreign has reached New York.

Q. In such cases, the arbitraries are discontinued and the regular price put in?

A. Not necessarily, no. I cannot check them up as to time.

Q. Well, there have been periods when the arbitraries were discontinued in the market?

A. That is true, I think.

6663 Q. In selling to the Government, and shipping on Government Bill of lading, the Government takes title
6664 at the mill, doesn't it?

A. On a Government bill of lading, yes.

Q. And you sell that way?

A. Yes, under certain conditions, we sell that way.

By Mr. Wooden:

Q. Well, it is a common practice to sell f. o. b. mill to the Government on a Government bill of lading, as I understand.

A. All I know about that is that the instructions you get from the Government when you are given a Government bill of lading, is that that is the way the proposals show, and I never questioned it.

Q. If the Government takes title at the mill, why isn't it fair for the Government to figure its costs delivered to its destination without regard to whether you figure the price delivered to that destination?

A. The Government takes title to it at the mill
6665 after they determine their cost at destination first, and make the award on that basis.

Q. Isn't it possible for a buyer buying f. o. b. mill to get his cement delivered to a given destination at less than railroad rates, by the use of truck or water?

A. I have heard that argued both ways, Mr. Wooden, and I have seen it work both ways in actual practice.

Q. Is not the industry opposed to trucking because of he effect trucking has in lowering the destination price?

A. I wouldn't say that that was a consideraion in our case.

6668 Q. Mr. Neylan, have you not declined to quote the Government f.o.b. mill price when they asked for an alternate bid on an f.o.b. mill basis, and also on a delivered price basis?

A. Well, we have quoted them on the basis of destination cost, which permitted them to determine a price for contract or invoicing purposes, at our mill.

Q. But you have not given them a quotation f.o.b. mill?

A. I consider that is a form of quotation f.o.b. the mill.

Q. You mean, unless you knew the specific destination where the cement was to be used you refused to quote f.o.b. mill, unless you knew the destination?

A. We want to know the destination, yes, sir.

Q. Even though the Government takes title to it at the mill and it becomes its property, you do not quote, unless you know the destination?

A. We think it is useless to quote.

Examiner Norwood: But if you quoted the f.o.b. mill price, wouldn't that enable the Government to check your transportation figures better?

The Witness: It don't know that it would, no, sir.

By Mr. Wooden:

6669 Q. Well, the transportation from the different mills to a given destination is different, isn't it, Mr. Neylan?

A. In many instances, yes.

Q. And where it is different, you could not have, under those conditions, an identical delivered price, could you?

A. If everybody was quoting a fixed mill price and all rates were different, if they quoted on that basis, you would arrive at different prices at a given point.

6673 Q. Don't you find the land grant factor, whatever it may be, or however you may get it, affects your base price just as in ordinary business in the territory where your mill base price prevails?

A. That is only one step.

Q. Well, answer it so far. Isn't that true?

6674 A. That is one of the steps that we take, yes, but we have to compare that resulting price with what we can approximate from other plants.

Q. That is just like you do to determine which base price is prevailing, isn't it, on commercial business?

A. Except that it carries you further than you usually find, on commercial business. That is, it does at times.

Q. It takes you into a wider territory?

A. Yes.

Q. The principle is the same?

A. The principle is virtually the same.

Q. Do you expect your quotations on Government destination cost basis with land grant rates figured in, to be identical, just like you expect your commercial business to be?

A. We are going to try to make them that, if we are interested in the business, with what we get out of it.

6675 Q. And if you have a lower freight rate from your mill, you are not going to use that to make a lower price than the mill that has a higher freight rate?

A. If we give them the benefit of the lowest freight rate that we can find, whether that applies from our mill or some other mill, they get it.

Q. It depends upon whether the base prices may differ, though, doesn't it?

A. It depends on what the combination of the two are, yes.

Q. You might have a lower freight rate and a higher base price that offsets it?

A. That is true in other instances also.

Q. Will you refuse to quote the Government f.o.b. mill even though the Government itself did not know all the destinations at which it wished to use the cement?

6677 The Witness: We have in the past quoted the United States Government f.o.b. the mill. We have known that it was simply a case of mental calisthenics as far as we are concerned. It got us no business, because in every single instance, the Government in making 6678 its award figured out the destination of its cement and made the award based on the ultimate cost to them at the point it was going to use it. I cannot conceive of anybody buying anything and not knowing where he is going to use it.

Examiner Norwood: Then you do refuse to quote the Government unless the destination is stated?

The Witness: Unless we have an opportunity of meeting the price at the point where they are going to compute their costs, yes.

Q. Had W.P.A. purchases not been—isn't that just the situation that the Government does not know where the W.P.A. projects are going to be carried on in the next few months?

A. I don't know of a single instance where they have asked for prices in connection with W.P.A. pur-
6679 chases where they not only did not know but did not show where it was going to be used.

Q. How about the recent proposals in which the destinations are not shown?

A. It is stated right in the proposal that they are going to figure the awards based on the ultimate cost to the Government.

Q. But they do not state the destinations?

A. That is a supposition. I have a right to suppose that they do know.

Q. And you insist upon them stating the destination before you will quote?

Examiner Norwood: Is that right?

The Witness: Yes. We want the opportunity of quoting at the point where they are going to buy it.

By Mr. Wooden:

Q. So you can make a destination price and not an f.o.b. mill price?

A. We want to have our prices in line with the prices at the point where they are actually going to use it, where they are going to buy it.

Q. In line with other mills at that particular destination?

A. At least in line with them.

Q. I notice in that connection that you told Mr. Leisure that you try to sell as cheaply at destination as any
6680 other mill. You do not try to sell more cheaply?

A. Well, I don't know how to answer that question. I don't see the sense of trying to truck—after all, price is not the only thing.

Q. You do not see the sense of trying to sell any more cheaply than your competitor at any given destination?

A. Do you mean cutting the price?

Q. Yes, any more cheaply.

A. There are some cases, yes, where it would be absolutely silly to do it.

Q. Was it silly to do it in that case at Fort Dodge that we had up the other day where by error you quoted four cents lower at that one point, and decided to withdraw from the whole business in the State on account of it?

A. Based on our experience, it was silly to even contemplate that we would get any business in Iowa.

Q. You told Mr. Leisure, I believe, that if you cut the price at any given point, that it would simply be met and the prices would be identical as before, is that right?

A. I am assuming that others would do what we would do. We would meet a lower price if we were interested in the business.

Q. You do not consider that a normal expression of competition to have prices forced down in that way by one competitor endeavoring to undersell another?

6681 A. Well, we have had any number of instances where they were. Whether you call that normal or abnormal or subnormal, I don't know.

Q. Which do you consider the normal,—the common ordinary identity of delivered prices or the departures from that identity?

Mr. Leisure: I don't think that is a fair question.

Examiner Norwood: He can give us his answer to that.

Mr. Leisure: He has explained very full, your Honor, what he means by the necessity of meeting competitors' prices.

Mr. Wooden: It is a question of what he considers to be competitive.

Mr. Leisure: He said he had no objection to price reductions, and he has stated what followed.

Examiner Norwood: Let him answer it.

The Witness: Anybody that wants to quote a lower price has a perfect right to quote it if they want to; and it is up to us then either to meet it or not, just as we see fit. Whether that is normal or not, I don't know, and I assume that normal means the quoting of a price that is a reasonable price, and that is as far as I can go with it.

6682 By Mr. Wooden:

Q. And after you set what you consider a reasonable price in your territory and announce it, you consider it abnormal for some mill to come into that territory and cut it?

A. Then it is up to that mill to do as he sees fit. If he wants to lower it, let him lower it.

Q. Do you sometimes put into effect base prices at the mills of such concerns as cut your price?

A. Well, I don't know whether you would consider it that or not. A number of years back, we found some quotations out in the field that indicated that somebody—a certain mill—was using a basis that we could not check. We checked it back and determined that so far as we could figure out, they were using a price at our mill, and we used those prices. Whether you consider that checking a price at the mill or whether you consider that meeting their destination price, I don't know.

Q. Did you put in a base price effective at their mill then?

A. I would not call it a base price effective at their mill, but I would say that we were meeting destination prices which we found them quoting.

Q. But you used their mill as the base on which to figure it?

6683 A. Not necessarily.

Q. Isn't that the case at the Spocari, Alabama?

A. That is the case at Spocari, Alabama. As far as I can recall, it affected, I think, the City of New Orleans and a few points north of New Orleans.

Q. You found those lower prices in effect at certain destinations?

A. Yes, sir, pretty generally, too.

Q. And you put a base price in effective at their mill covering all destinations?

A. No, sir, we met their price.

Q. But at the destinations where you did not find their price?

A. I don't recall that we did. I think we were—I don't recall that we did. I recall several specific jobs that were pending at the time on which we quoted the lower price.

Q. That was a very substantial cut you made, wasn't it?

A. I don't recall that it was.

6684 Q. Do you recall what it was?

A. No, I don't. I don't believe it was substantial.

Q. Did you take over the Spokari mill some time after that?

A. A number of years afterwards, yes.

Q. Did you keep that price in effect until you took it over?

A. We kept the mill price in there.

Q. That made it almost impossible, didn't it, for that concern to operate at a profit?

A. I wouldn't say that. I don't know. They were certainly very willing to take those prices.

Q. They had to, after you put them in?

A. Before. Their quotations are absolute evidence of fact.

Q. They took them at some points?

A. They were pretty widespread?

Q. You found in that case, I assume, that your Birmingham base price was not being observed by this Spokari mill?

Mr. Leisure: I don't know how he would know whether they were observing the base price, your Honor. There is no way for this witness to determine that.

Examiner Norwood: He can say what he found out about it as a basis for what he afterwards did.

A. We found quotations in the field issued by the
6685 Warrior Cement Company, as I recall it, which indicated that they were using a price at their plant.

Q. You mean that they wanted to become a base point mill?

A. I don't know whether they wanted to, or not, but they did.

Q. You were the one that put the base price in there, weren't you?

A. I disagree with you on that.

Mr. Leisure: He has answered that many times.

Examiner Norwood: Let him answer that again.

The Witness: I maintain they put their own price on. All we did was to meet the competition.

By Mr. Wooden:

Q. You mean they brought it upon themselves?

A. I don't care how you characterize it. They quoted their own prices. We had nothing to do with the prices they quoted, and we had to assume that those were the prices on which they were willing to sell.

Q. Their prices were not the equivalent of the Birmingham base plus freight; is that what you mean?

A. Not necessarily Birmingham. It might be New Orleans. It might be any other place.

Examiner Norwood: Were they lower than Birmingham plus freight?

The Witness: I do not know that in all cases that
6686 the original destination figured on Birmingham.

Examiner Norwood: Were they lower?

The Witness: Yes, sir; in all cases.

By Mr. Wooden:

Q. New Orleans was not in effect at that time as a base, was it?

A. I think there was a price at New Orleans.

Mr. Leisure: What year was this?

Mr. Wooden: I think it was 1929.

By Mr. Wooden:

Q. 1929: Is that right, Mr. Neylan?

A. I don't recall the year. I remember the incident, but I don't know the year. That is the reason I am not sure about the New Orleans base.

Q. When you spoke of the seventy basing points in effect during 1931, you included such points as Fultonham, Painesville and Osborn, didn't you?

A. I don't know. It is on the record.

Q. Weren't those points established as basing points by the action of mills located at other points?

A. I don't know.

Q. And owned by other companies?

A. I don't know.

Q. You have known that to be done, haven't you, in the industry, in addition to the Spokari?

6687 Mr. Leisure: Not "in addition." He has not said it was done in Spokari, so far. I object to that question. There are two questions in it.

Examiner Norwood: Read the question.

(The question is read by the reporter.)

Examiner Norwood: Was it done in the Spokari mill?

The Witness: I don't know whether you would call it that or not, your Honor. We met prices we found. We found prices and we met them. They put their own price on. I assume that is what happened in other cases. I don't know.

By Mr. Wooden:

Q. You put in a base price at Spokari, didn't you?

A. We made prices that we figured that they had quoted. We found prices that they had quoted.

Q. You made the base price the equivalent of what you found at some destinations; is that right?

Mr. Leisure: The witness has not said he made any base prices.

Examiner Norwood: He is asking him now if he did.

A. All we did was meet what we considered was their price.

Examiner Norwood: What you did that you
6688 considered their price, did it amount to your making it a base price?

The Witness: No. We contend that they made their own base price.

Examiner Norwood: But did it amount to the same thing as if you had done that?

The Witness: I would say that if we had not located those quotations and had put a base in there it might, in many cases reach the same level in the field; but I never contended that we put a base in there. I contend that they put their own price in there.

By Mr. Wooden:

Q. Do you contend that if a mill makes a price at a given destination that nets it, that makes it less than the sum of the base price applicable plus freight, that that is the price cut that you are entitled to meet by putting in a base price at the mill that makes such a departure?

Mr. Leisure: Your Honor, that would be better in a brief, and I object to the question.

Examiner Norwood: No, I think he is asking the witness's opinion.

Mr. Leisure: What this witness's opinion on that is, is
6689 not binding on the other respondents in this case; it is not even binding on his own company; and I object to it.

Examiner Norwood: Read the question.

(The question is read by the reporter.)

A. No, I do not.

By Mr. Wooden:

Q. As I understand this Spocari incident, you found them at certain points making a price that netted them a certain amount at the mill; is that right; and then you put in that net amount at the mill as the base price?

Mr. Leisure: Counsel is merely testifying, and I object to that method of examination. He is saying "You did

this" and "You did that," and the record shows to the opposite. The record shows he met competition and did not assume to do as counsel has suggested.

Examiner Norwood: Well, let him answer. Objection overruled.

A. I still say that we met the prices that they quoted, and that they put their own price in. Where you have enough quotations to substantiate uniform difference in price, you have every reason to believe that that is the price they want. That is the only way you can determine what the other man's prices are and what he wants.

Q. You figure that back to his mill to find out what he wants, what he is willing to take?

6690 A. It is the only way you can determine, for instance, when a mill wants to become a base mill, when you find quotations in the field to indicate that he is using his net mill as a starting point for figuring his prices.

Q. Why wouldn't it be in order for some Lehigh Valley mill or Hudson mill to lower the Lehigh Valley base to the equivalent of the mill net figured on the New York arbitrary?

A. They have a perfect right to. It is up to them.

Q. You did this in the other case; why don't you do it in that case?

A. I don't think the two are comparable at all.

Q. There was a departure in both cases, as I understand it, from the sum of the mill base price applicable plus freight.

A. Here is a mill that was quoting certain prices. We are in contact with them. We knew what they are quoting. We are soliciting the same dealers and the same contractors. All of a sudden a change takes place and to the best of my knowledge and belief the change represented the difference in the freight rates from Spokari as against Birmingham or some other basing point. That is my recollection of it. That leads us to believe that we have a perfect right to meet that competition.

Q. Spokari took in that case the right to estab-

6691 lish the same thing?

A. They undertook to establish themselves as a base mill, yes.

Q. And to give the purchasers the same advantage?

A. That's all right.

Q. There is such a thing, then, as mills becoming base

mills, by action of their competitors, rather than by their own?

A. By action of themselves.

Q. You mean by cutting a price?

A. No, sir; I don't mean by cutting a price; I mean by publishing to the whole world that they are asking a uniform return of their plant in certain territories, and that is the only way under Heaven that we can find those prices.

6692 Q. But you won't agree that any mills have been made base mills involuntarily and against their intention?

A. I don't know. My understanding is that if they were used for basing purposes they made their own decision, either by quoting in the field or by publishing it to the world.

Q. As I understand, the Spokari mill did not announce that it was going to be a base mill or wanted to be a base mill.

A. I don't know that they put it in the newspapers, no.

Q. Or to the trade?

A. I am not so sure that they did not tell some of these contractors that they were figuring on their own mill.

6693 Q. You think that a non-base mill should not figure on the basis of its own mill?

A. They have a perfect right to do it, but once they do, we have a perfect right to meet their competition if we want the business.

6697 Q. Have there been some times when other base mills take price leadership even in the territory ordinarily governed by your base price?

A. Do you mean that the other mills quote lower
6698 prices into the territory that may be close to our mills?

Q. No, I mean in the territory where ordinarily your base price prevails, the fact that other mills will nevertheless take price leadership in that territory?

A. Well, it is conceivable that they take that leadership down on the plant, and that reflects itself in our territory by coming closer and deeper into our territory.

Q. But that reflects from your plant out through the territory?

A. No, not necessarily from our plant. It would reflect in the territory that was governed by his own base, if that is the way you want to look at it, which may cut off some territory that heretofore figured on our plant.

Q. Now, in regard to diversions, Mr. Leisure asked you about whether you thought that was fair, after selling for delivery at a certain place, for the purchaser to divert it elsewhere? The effect of that has been in many cases, has it not, to disturb or upset the regular delivered price at the place to which it was diverted?

A. Not necessarily.

Q. In some cases, hasn't it been true?

A. In some cases it has and in some cases it has not.

Q. In some cases it has?

A. It may; it is possible.

Examiner Norwood: In the majority of cases,
6699 wouldn't it do so?

The Witness: Not necessarily, no. It all depends on the purpose that the party had in mind in diverting the car.

By Mr. Wooden:

Q. In other words, if a dealer, he might just put the added profit in his pocket and not undersell?

A. Yes, that is also possible.

Q. That is possible?

A. As a matter of fact, the chances are a hundred to one if he is able to do it, unless he is caught out on a limb, he will do just that.

Q. But he may on the other had use it to shade the price?

A. I cannot undertake to say what the average dealer will do.

Q. Haven't you found that to be the case in a number of instances?

A. In some cases, yes, sir.

Q. And don't some dealers want to divert for that purpose, so that they are able to undersell other dealers?

Mr. Leisure: I object to what some dealers want to do. He may testify to what is done, but not what dealers want to do.

By Mr. Wooden:

Q. Judging from what they do so.

6700 Examiner Norwood: He can state any case he knows along that line.

The Witness: Well, I don't know that that is so definitely. He may be following up one of his own customers into that territory where normally he would not be able to buy from us.

By Mr. Wooden:

Q. You referred to cases here in the arbitrary zone where dealers made arrangements with truckers to take it outside into the higher-priced territory?

A. In New York, yes.

Q. Do you find that true around Boston also?

A. Not to the same extent.

Q. To some extent?

Mr. Leisure: The same question exactly was asked on the direct; the precise question.

Examiner Norwood: That is my recollection.

Mr. Wooden: I think that is to some extent true, your Honor, but it comes up again in connection with diversions, and Mr. Leisure's cross-examination went into it, and I wanted to bring to his attention this other element in his testimony.

Examiner Norwood: Read the question.

(The question was repeated.)

Examiner Norwood: You can answer the question.

6701 The Witness: It may be to some extent for the purpose of getting a lower price. On the other hand, again, it may be for the purpose entirely of going into a territory where he normally could not buy, where normally we would not sell.

By Mr. Wooden:

Q. How do you reconcile your statement to Mr. Leisure that you cannot sell at a higher price than your competitors, with your testimony that foreign cement is sometimes sold at a higher price than domestic?

A. I only cited one instance where I thought it was, and I cannot reconcile that. A man down there seems to have a pet peeve against all cement men. I don't know how long he is going to get by with it, either.

Q. He is willing to pay more to satisfy his peeve?

A. He is, if our calculations are correct.

Q. Is the foreign cement of any better quality?

A. I would never admit that.

6705 New York, N. Y.
Thursday, May 19th, 1938

6706 JOHN F. NEYLAN, previously duly sworn, resumed the stand and testified further as follows:

Cross Examination by Mr. Wooden (Continued)

6723 Q. In the territory where you have freight advantage, why don't you use it to get a larger share of the trade by reducing your price?

6724 The Witness: I say we are doing it and we are doing it very successfully.

By Mr. Wooden:

Q. Well, you are not reducing your normal base price, are you?

6725 A. Reduce it to what? We have reduced it to the point of where we have accomplished everything we wanted to, and still in the judgment of our company it is still a fair price. I do not set the price at the mills; that is a matter of policy, but I do know the effect, and it has very successfully worked.

6730 Q. You have testified that in the Lehigh Valley you get $1.65 as your mill net?

A. As a maximum, yes.

Q. In competition with all the mills in that district?

A. That would be the maximum that we could get, generally.

Q. And you do get it sometimes?

A. Yes.

Q. And you also testified that in the New York market to meet foreign competition, you made a price that netted you only $1.62?

A. Yes; we met a price.

Q. That is the maximum you could get in the New York market, whether your shipment comes from Lehigh Valley or Hudson?

A. That is generally true, yes.

Mr. Wooden: Then my question applies, your Honor.

Mr. Zimmerman: Perhaps counsel will explain what he means by the term "kind of money." Perhaps I have misjudged him, but I would like to know what he means by that.

Examiner Norwood: I think counsel should explain that.

6731 Mr. Wooden: Money is standardized, and so is cement, I would say, and it is just my way of asking why he makes that different to different customers in different locations.

Mr. Leisure: I think that is what counsel meant in the beginning, but that is not the question.

Examiner Norwood: Can you answer the question as thus explained?

The Witness: Do you want me to answer the original question?

Examiner Norwood: Yes.

The Witness: I don't know that there is any difference in the kind of money.

Examiner Norwood: Read that original question again.

(The original question is read by the reporter.)

Examiner Norwood: Now, counsel can make his question plainer, I think.

Mr. Wooden: I used figures. I went into considerable detail, after objection was made, to show in what sense I used it. I do not know that I can do any more about it.

By Mr. Wooden:

Q. Another point, Mr. Neylan. On cross examination you referred to a conversation with Mr. Duffy here,

6732 his statement about him being in contact with the Federal Trade Commission. Was that before or after your refusal to sell him because he was handling foreign cement?

A. It was after.

Recross Examination by Mr. Leisure.

Q. Yesterday Mr. Wooden again asked you some questions as to why you merely met your competitors' prices and why you did not sell cheaper than they did, if you wanted the business. Would you allow a competitor to sell at a lower price than your own in your own territory, if you could afford to meet his price?

A. We would not, as long as we were interested in the business.

Q. And you would be interested in the business if you could afford to meet his price, wouldn't you?

A. I imagine so.

Q. So there would come a time after all this jock-
6733 eying that Mr. Wooden has suggested, that you would arrive at and establish or recognize a regular market price; is that or is that not true?

A. I would say that is generally true.

Q. And when I say market price I do not mean two prices, one above the other; I mean a market price; is that what you find?

A. That is what we generally find, yes, sir.

Q. Referring to your testimony a moment ago, about this minimum line haul rate, as I understood you, there is a zone around your mill within which you have a flat delivered price?

A. Yes.

Q. Do your dealers figure in that situation in
6734 any way, as to the reason for that price?

A. Yes, to a certain extent. In other words, there you have dealers in that area that are in competition with one another.

Q. Does that or does it not make it necessary for you to make the same price to everybody?

A. Yes, we consider that it does.

Mr. Leisure: That is all.

By Mr. Zimmerman:

Q. By that you mean everybody as nearly as possible in the same competitive area?

A. In the marketing area, yes, sir.

6741 JAMES J. TWAMLEY, being called as a witness on behalf of the Commission and being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am the Sales Manager and also the Vice President in charge of sales of Coplay. I have been with the concern in my present term of employment since December 1918.

"Q. Is Coplay a member of The Cement Institute?"

"A. I believe they are; yes, sir."

I think it joined shortly after the Institute was formed. As far as I can recall, Coplay has been a member since it first joined.

The Coplay mill is located at Coplay, Pennsylva-
6742 nia, across the river from Northampton. We are separated by the Lehigh River from that town. The mill is in the Lehigh District and has a capacity of 2,400,000 barrels per year. We are the oldest manufacturer of Portland cement, I believe, in America but the mill has been rebuilt several times.

Q. What is the territory in which you sell your product?

A. Well, I would say the States of Massachusetts, Rhode Island, Connecticut, the State of New York—that is the southern—well, the part of the State of New York that lies south of the main line of the New York Central Railroad, until you get to Rochester—we don't go to the northwest section—then we go south about to a line drawn about two-thirds, perhaps, to the State of Pennsylvania, north and south; and then we include Baltimore and vicinity and the States of New Jersey and Delaware; and we also sell a small quantity of cement in the District of Columbia, and an occasional car outside of the territory.

6743 Q. Do you sell in Virginia?

A. Seldom. We have shipped some cement to Virginia at times when some contractor who is a friend of ours got a job down there and asked for our cement. It is not our normal territory.

Q. Have you quoted on State of Virginia Highway Commission business?

A. No, sir.

Q. Is your mill a basing point mill?

A. Practically so on account of our proximity to Northampton, which is a basing point. We are within a mile of Northampton, and our freight rates are, I believe, practically the same.

Q. Is the delivered price within the Lehigh Valley figured from Northampton?

The Witness: We use the Northampton rate in arriving at our prices.

By Mr. Wooden:

6744 Q. Is your delivered price within the Lehigh Valley district the same as the delivered prices of other mills at given destinations within the district?

A. Well, I know of no discrepancy.

6750 Q. You just follow along and adopt what prices are named by others?

A. That is true.

6751 Q. What mills in the Lehigh Valley have you known to initiate changes in base prices?

A. I cannot tell you; I don't recall.

Q. How do you find out about changes in base prices?

A. We get our information from our salesmen in the field and from our dealers.

Q. Do you have them pick up canvass quotations sent out by competitors?

A. Yes, that is one way, but often our first information will come from the dealer, particularly if it is a reduction in price.

Q. You are able to ascertain from printed quotations that you find in the field what changes are made?

A. We are.

Q. Do you rely on the printed quotations for news of impending price increases?

A. Whose printed quotations?

Q. Printed quotations of competitors?

A. Yes, if we find printed quotations of competitors in the hands of the dealers, we certainly take them into consideration.

Q. Has your president issued instructions to you to follow along and adopt the same base price that you find the other mills in the Lehigh Valley are making?

A. I cannot say that he ever has given me instruc-
6752 tions definitely to that effect.

Q. But that has been your practice anyway?

A. That has been the practice. If there is a change in the base price, we report to him and talk it over and he tells me what to do.

Q. When you go into territory where other base prices prevail, do you make it a practice of meeting the delivered prices in that territory?

6753 A. We do.

Q. What is the territory in which the Lehigh Valley base makes the going price?

6754 The Witness: I could not define that territory without going over the map very carefully.

By Mr. Wooden:

Q. I would not expect you to define it exactly, but can't you approximate it in general terms?

A. Well, I would say that it would apply in Eastern Pennsylvania, New Jersey south of Trenton, Delaware—I am not sure about all parts of Delaware, in fact I am not sure about the territory. I am making my best estimate.

Q. I understand.

A. And there is a section there to the north and northwest and to the northeast also in Pennsylvania where the Lehigh Valley base would govern, and there is some territory in southern New York, I think, I mean in the southern tier. That would be about my description of it.

Q. And in all of that territory, at the present time you net $1.65 on your sales?

6755 A. No, sir, we do not.

Q. To what extent do you?

A. We net $1.65 on sales which are made at the point where the freight rate is less than 10½ cents per hundred pounds.

Q. And beyond that, then what?

A. Beyond that, there is a cent or two comes off the base according to the amount of the freight that we have to pay.

6756 Q. You do not pay the freight to the railroad, do you, on your shipments?

A. No, sir; we do not prepay.

Q. The delivered price is stated on the face of the invoice to the dealer or the purchaser, and the freight deduction is figured there also, and the purchaser pays the railroad the freight and remits the balance to you; is that the way it is done?

A. That is the way.

Q. When you go into the territory of other basing points, the territory where other basing points govern, as you use the expression, you take a progressively smaller realization at the mill as you go into those territories?

A. We do.

Q. Do you have a minimum below which you will not go?

A. There is no fixed figure that has ever been given to me as an absolute minimum.

Q. Do you sometimes go into that other territory at a net loss?

A. I couldn't say. Our costs are variable.

Q. You know what your average costs are, I presume?

A. I could not answer that question.

Q. You do not know what your average costs are?

A. I do not. It depends upon the amount of cement we make, and I do not know what that quantity will be.

6757 Q. Do you have anything to guide you in determining what the minimum mill net you will accept is?

A. Yes, sir; I have a president.

Q. Do you know on what basis he guides you?

A. I do not.

Q. What is the approximate range between your high and low mill nets in such territories?

A. Well, I couldn't answer that exactly, without getting my freight rate books out, but I think—do you want an approximation?

Q. Yes.

A. I would say it is somewhere around $1.17.

Q. As a minimum?

A. As a minimum, yes, sir. I may be wrong.

Q. And where would the average be?

A. Oh, the average price at the present time, I suppose, would be perhaps $1.45.

Q. You mean by that the average mill net?

A. Yes, sir.

6761 Q. Do you aim to make your delivered price the same at any given destination that your competitors make at those points?

The Witness: We aim to meet competition in the territory where we intend to do business.

By Mr. Wooden:

Q. Do you mean by that that you aim to make your price equal at a given destination with that of your competitors?

6762 The Witness: My answer is that we meet competition where we find it and as we find it.

Q. By meeting the competition at a given destination, you mean making your price the same as that competition?

A. That is what I mean.

Examiner Norwood: Do you try to make it any lower?

The Witness: No, sir.

By Mr. Wooden:

Q. And if you made it higher, you would be out of the market?

A. I think so.

Mr. Wooden: Your Honor, I offer at this time an ex-

bibit previously marked and identified as 304-F. It was identified by Mr. Brown as a document from the files of the witness' company. Do you recognize that, Mr. Twamley?

The Witness: (Examining paper) I do.

Mr. Wooden: I offer it.

Mr. Leisure: No objection.

Mr. Zimmerman: No objection.

6763 (COM. EX. 304-F was offered and received in evidence.)

6769 Mr. Wooden: Your Honor, I offer at this time an exhibit previously identified as 304-E, as a communication from the files of the witness's company.

By Mr. Wooden:

Q. Do you recognize that, Mr. Twamley?

A. I identify that.

Mr. Wooden: I will offer it.

Examiner Norwood: Any objection?

Mr. Zimmerman: No.

(COM. EX. 304-E was offered and received in evidence.)

6770 By Mr. Wooden:

Q. If your sales representative reports to you, as Mr. Larned did in this exhibit, that another company has cut the price, do you meet it on that information?

A. We do not meet it on a buyer's verbal statement that he has had the lower price.

Q. Do you meet it on information furnished you by your own salesmen representatives?

A. We certainly would, if it can be shown in black and white as authentic.

Q. It was not shown in this case?

A. I am very sure it was not, Mr. Wooden, although I do not remember the details.

Q. Do you mean, by evidence in black and white, some printed or formal quotation of a competitor?

A. Not necessarily. Anything in the form of a written quotation that is signed by someone connected with a cement company who has authority to sign, I would consider an authentic quotation.

Q. You mean by that some cement companies that are in competition with you?

A. Oh, certainly.

Mr. Wooden: I offer at this time an exhibit previously identified as No. 305.

Mr. Leisure: You mean marked as 305?

6771 Mr. Wooden: It was marked for identification, it was identified as coming from certain files of a respondent.

Examiner Norwood: I think that identifies it in some way, to mark it for identification.

Mr. Wooden: And there was testimony to some effect that it came from the files of the company.

By Mr. Wooden:

Q. Do you recognize it, Mr. Twamley?

A. Yes, sir.

Mr. Wooden: I offer it.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Zimmerman: All right.

(COM. EX. 305 was offered and received in evidence.)

Q. Was your base price at your mills $1.65 at the time you authorized this quotation or a mill net as low as $1.25?

A. Yes, sir.

Q. What base price governed in the territory to which those quotations were authorized?

6772 A. I do not locate Dunbar, Pennsylvania, but I think Franklin is probably based on the Universal Atlas.

Q. Is that Pittsburgh?

A. Yes, sir.

Q. Showing you a paper marked for Idenfification 250-A and B, will you identify it as a form of quotation used by your company?

A. Yes, sir; that's our form.

Mr. Wooden: I will offer it, your Honor, with the explanation that it was obtained by a Commission representative from the files of another respondent.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Twamley, this part on the second page that has been blocked out, do you know what that carried originally? Was that a printed slip or notice attached to the face of the document?

The Witness: We made some change in our method of handling cloth bags. We did at one time sell them and

receive them, or buy them back at ten cents each, and later we put in a system of leasing or renting the bags to the buyer, with a deposit which he makes at the time of his paying his bill, and that deposit was returned to him when he sent the bags back. I think that blocking that out has no doubt something to do with that changing; but I
6773 cannot say what it is without comparing it with the other form.

6774 Mr. Leisure: Do you know whether or not you could get another one of these forms that shows what these lines are that are blocked out?

The Witness: Certainly I can get it.

6775 Mr. Leisure: It looks as if the name of the individual to whom the quotation was made was blocked out. Whoever photostated it took that off, is the way it looks to me.

Mr. Wooden: There is not any party to whom it is addressed. It is simply a quotation f. o. b. Atlantic City.

The Witness: There certainly was a man to whom it was addressed.

Mr. Wooden: Is it a fact, Mr. Twamley, that the dealers will frequently not furnish information like that except on condition that their name not be disclosed as furnishing it?

The Witness: We do receive information that the dealer requests us to consider confidential, very often; yes, sir; but we have received quotations where the name was not blocked out, in other words, he gave us the informa-
6776 tion intact and relied upon us to keep it confidential.

Q. It depends on the individual dealer or customer?

A. It depends on the individual, I should say.

Examiner Norwood: And the blocked portion there on the front is the elimination of the dealer's name?

The Witness: Yes, sir.

(COM. EX. 250-A and 250-B was offered and received in evidence.)

Q. Do you print the terms, conditions and limitations on your invoices as well, that you have on this quotation form?

A. I am not sure whether we do or not.

Q. Will you produce an invoice form?

A. Certainly.

Q. I notice a provision here that in making delivered prices, you guarantee only the cost at destination?

A. Yes, sir.

6777 Q. How many salesmen do you have, Mr. Twamley?

A. I think we have twenty-two at present.

Q. Do your salesmen carry the freight rate books of the Institute?

A. Some of them do.

Q. How many of them do? Which ones?

A. I could not give you a definite answer. I know that the men that canvass the city here, the Metropolitan District, have no freight rate books. You put them up in the woods.

Q. You don't use them here where the arbitraries are in effect?

A. Yes, sir; they are of no use.

Q. Where your salesmen do carry them, do they use them to calculate the delivered price at the different destinations?

A. Presumably they do, but it is understood that all quotations are to be confirmed at the office.

6778 Q. You supply them with the freight rate books so that they may use them for that purpose?

A. Yes, sir.

Q. Why do you have the salesmen's quotations confirmed? Is that in order to make sure that they make the correct calculations?

A. Well, that is one reason, and then there is another. We want to know what they are doing, we want to know what our commitments are.

6779 Q. Was there a time when you supplied your salesmen with a list of the delivered prices?

A. In what territory, Mr. Wooden?

Q. In any territory did you supply them with a list of the destination prices at each destination?

A. We give them the prices. If the prices are not based on mill base plus freight, they are informed as to what the prices are.

Q. You mean in a case of special prices or arbitrary prices?

A. Yes, sir.

Q. Do you recognize this paper that I hand you, marked 298-C for Identification?

A. That looks like ours.

Mr. Wooden: I offer it, your Honor, with the statement that it was identified as coming from the witness's company's files, by a member of the Commission's staff.

6780 JAMES F. TWAMLEY resumed the stand and testified as follows:

Mr. Wooden: I believe there is an offer pending, your Honor.

Examiner Norwood: Yes. Is there any objection to the proffer?

Mr. Leisure: No objection.

(COM. EX. 298-C was offered and received in evidence.)

Q. Mr. Twamley, who was P.J.L., Assistant Sales Manager?

A. That is P. J. Loughran.

Q. At your headquarters office?

A. Yes.

Q. What was the list of delivered prices that is referred to in this Exhibit 298-C?

6781. Q. Did you have at that time the list of delivered prices that your salesmen carried?

A. Once more I would have to assume from this letter, that we did.

Q. Yes.

A. But I have no knowledge.

6782 Mr. Leisure: May I ask the date of the letter? Is that during the Code period, Mr. Wooden?

Mr. Wooden: June, 1935, I believe.

Mr. Leisure: What is the date of the letter?

The Witness: June 3, 1935.

By Mr. Wooden:

Q. Do I understand you to say that you think you did have at one time a list of delivered prices that your salesmen carried?

A. No, I didn't mean to say that I think so. I say it is apparent from the phraseology in this letter that there must have been some points where delivered prices were quoted. I have no personal knowledge.

Q. Not merely quoted, but carried?

A. Yes; carried, evidently.

6783 Q. Showing you a paper marked 298-D for identification, do you recognize that as a communication to you from your manager at Boston, Mr. Larned?

A. I identify that.

6784 (COM. EX. 298-D was offered and received in evidence.)

Q. What was the Code price list that is referred to in this communication of October, 1935?

A. I don't know.

Q. It was addressed to you?

A. No doubt I understood it at the time. I can give you a possible explanation.

Q. I want your best explanation of what the reference to the Code price list was.

The Witness: I believe then, this was the period during which we were still using the prices which had
6785 been filed during the Code period.

By Mr. Wooden:

Q. And did you have a price list that contained the delivered prices that your salesmen used at that time?

A. Yes, they had the list of the filed prices that had been filed with the Code; that is, Mr. Larned certainly did.

Q. In what form were those lists of filed prices put up for your use?

A. Well, we got them in mimeographed sheets or duplicated sheets from the Code Authority, I think.

Q. And after the Code Authority and during this period, did you get them from the Trade Practice Committee?

A. I assume we did.

Q. Did you put them out to your salesmen just as you received them?

A. No. I don't think so.

Q. I mean, in the form you received them?

A. I don't think we did. I think Mr. Larned, who was manager of our Boston office, probably had a copy of the prices as they came from the Code Authority, in his office. I don't think we put them in the hands of the salesmen.

Examiner Norwood: But you made lists for them, did you?

The Witness: Either that or the prices were
6786 based on a known mill base plus a freight rate, and they had the freight rates available. It was not necessary to make a list for them.

By Mr. Wooden:

Q. They had the freight rate books of the Institute available for them?

A. Yes.

Q. Now, referring back for a moment to Exhibit 298-C, reference was made there to the salesmen using the list of delivered prices.

A. Yes, sir.

Q. Was that list of delivered prices the same as what is referred to in this Exhibit 298-D as the Code price list?

A. I answered your question regarding this exhibit that I did not know what it refers to. I don't know.

Q. Do you think it referred to something else than the Code price list?

A. No, sir. I would make a guess that it refers to a Code price.

Q. A code price list?

A. A code price list, yes, sir.

6787 Q. Do you recognize the paper I show you, marked 293, as a memorandum from the files of your company dated August 17th, 1936?

A. Yes, sir; I identify it.

Mr. Wooden: I offer it, your Honor, with the statement that it was previously identified by an agent of the Commission as coming from the Coplay Company's files.

(COM. EX. 293 was offered and received in evidence.)

Q. Is this memorandum by your Mr. Loughran, "P. J.L."?

Those are his initials, yes, sir: P.J.L. That is P. J. Loughran.

Q. Were the Code delivered prices still in effect in August, 1936?

A. They were not.

Q. Was the base price at your mill changed after the Code went out?

A. I do not think so.

Q. How long has it been $1.65?

A. I could not answer that accurately from memory.

Q. Was that the price at the mill during the Code?

6788 A. I think it was.

Q. And you continued to quote and calculate your delivered prices on the same base price after the Code went out, did you?

A. Yes, sir.

Q. With reference to figuring the price from the freight rate book in this exhibit 293, I take it that is referring to the freight rate books of the Institute?

A. It is the Institute books, no doubt, that is referred to.

Q. What has been the policy and practice of your company with reference to making deliveries to trucks?

A. We made delivery to trucks at our mill to a limited extent, for several years.

Q. Do you no longer make them?

A. No, sir.

Q. When did you discontinue making deliveries to trucks?

A. I think it was 1932.

Q. Did other mills in the Lehigh Valley District discontinue making deliveries to trucks about the same time that you discontinued?

A. I believe they did.

Q. What was the objection to making deliveries to trucks?

6789 Examiner Norwood: I will ask him to confine the question to his own company.

A. We were not equipped to handle truck delivery. Our plant was designed for carload delivery, and, in short, the truck delivery was a nuisance. We would be loading a car of cement, specification cement, perhaps, of the New York State Highway or New Jersey specification cement, and the trucks came up and they would not wait until the cars were loaded; and they complained and fussed, and the upshot was that we used double packing for the same delivery—we used to pack cement and stack it on the floor of the warehouse and load it in cars from there,
6790 which I think practically doubled the expense of the handling.

6791 Q. Did you for a time put in a special charge for truck loading?

6792 The Witness: I believe there was.

Q. To meet that condition that you just referred to?

A. Yes, sir.

Q. What was the charge you put in?

A. I am inclined to think that it varied. I think the maximum amount was 15 cents per barrel.

Q. During what period of time was that in effect? Before you discontinued the loading to trucks entirely?

A. I could not answer that.

Q. You fixed the date of 1932 as the time that you quit entirely?

A. Oh, yes, I can do that.

Q. You cannot approximate the length of time prior to that that you had the fifteen-cent charge in effect?

A. We trucked, I should say, for perhaps three
6793 years prior. I cannot say exactly when that fifteen cents went on.

Q. Was it immediately prior to the complete abandonment of trucking?

A. No, I would not say so. I think it had been on perhaps for some time.

Q. I mean, continued until you abandoned it?

A. Oh, yes, it continued. I think so.

Q. What other mills in the Lehigh Valley also had an extra charge for loading to trucks during that period?

A. I don't know.

Q. Do you mean to say that you would or could impose a charge, such a charge, without knowing whether your competitors did also?

6794 The Witness: The probability is that we did not. I don't remember and I had no opportunity of ascertaining what our competitors were charging, but I would say as a general proposition that we must meet their competition or they must meet our competition.

By Mr. Wooden:

Q. In other words, if you had a fifteen-cent charge for truck loading, you infer that they must have had also?

A. I think it probable. I do not infer that they must have had it also. I think, Mr. Wooden, that probably other mills were experiencing the same disadvantage with regard to handling cement by trucks. I think it probable they all were equipped to handling carload loading economically.

Q. You do not believe that you could have put a fifteen-cent truck loading charge in effect unless the others did?

A. I believe that we could not have put a fifteen-cent per barrel loading charge in effect unless our immediate neighbors did.

6795 Q. Now, as to the objections to trucking as you found them in your business, you have stated the objection in your own company not being equipped for loading trucks and how you met that by the charge of fifteen cents. Was there not another element in the situation consisting in the effect of trucking upon the stability of the delivered prices?

A. My recollection is not clear on that point.

Q. Do you recall instances in which cement was trucked out of low-priced territory into higher-priced territory?

A. I don't think we had any such experience.

Q. And do you recall any such instances in the territory where arbitrary prices were in effect?

A. None that I possibly know of.

Q. Do you recognize the paper I now show you marked 299-B for identification?

A. I identify that.

Mr. Wooden: I offer it in evidence.

6797 Examiner Norwood: Did you receive and act upon this report?

The Witness: We received it, but we did not act upon it.

Mr. Wooden: He answered it.

Examiner Norwood: You answered the letter, did you?

The Witness: I don't know.

Examiner Norwood: Just what did you do about it?

The Witness: I suppose I may have answered the letter. I didn't do anything about it, your Honor, as far as I can recall.

Mr. Wooden: The answer shows that he gave instructions in reply.

Mr. Leisure: Is there the answer there?

Mr. Wooden: Yes. I was going to offer it next.

Examiner Norwood: Well, let us offer it now, and consider them together.

Mr. Leisure: It would be easier for the Examiner to rule.

By Mr. Wooden:

Q. Mr. Twamley, do you recognize this paper, marked 299-A, as your answer to 299-B?

(Witness examines paper).

Mr. Wooden: Off the record.

6798 (Discussion off the record.)

A. I identify this.

Mr. Wooden: I offer it, your Honor, at the same time, and in connection with the other.

Mr. Leisure: Your Honor asked counsel the question as to whether the letter showed he acted upon it. I would like to have the paragraph or the sentence, or any place in the letter that indicates that the witness has acted upon it, pointed out.

Examiner Norwood: I asked the witness that.

Mr. Wooden: He gave instructions in reply to it.

Examiner Norwood: Does counsel object to that exhibit marked 299-A?

Mr. Leisure: I do not, your Honor, object to the last exhibit, it being a letter or memorandum written by the witness; but I renew my objection as to the hearsay portions of the first exhibit.

Examiner Norwood: The value of these exhibits, or their importance, may be drawn from the facts that a report was made and from the action taken. It is not important as to whether this report to Mr. Twamley here is true or not.

6799 Examiner Norwood: Yes. You see, they are not offered for the purpose of showing the truth of those particular statements as to that company doing the trucking.

Mr. Leisure: There has been no limit on the offer, your Honor. That is the point of my objection. The offer was not limited in any way. It was for all purposes.

6800 Examiner Norwood: As so limited by my statement, they are received in evidence and the objections are overruled.

(COM. EX. 299-A and 299-B was offered and received in evidence.)

6801 By Mr. Wooden:

Q. I was asking you, Mr. Twamby, whether or not the fact that trucks took cement out of low-priced territory and into higher-priced territory upsetting the price at the second place, was not a factor in your deciding not to deliver to trucks?

The Witness: It may have been an influence.

By Mr. Wooden:

Q. In that connection, does the statement of your manager, Mr. Larned, in Exhibit 299-B, referring to the ability of a certain concern to beat the price by placing his order with the Construction Service Corporation who are trucking the cement from Newton Center, does that aid you in recalling that trucking did have an influence upon the delivered price?

A. Yes, but that was trucking from cars and not from the mill.

Q. But did not trucking from the mill have the same tendency to upset the delivered price?

A. I would not say so.

6802 Q. Was not the transportation of cement by truck from the mill the cheaper mode of transportation than by rail?

A. It may have been to some localities, and it may have been more expensive. I could not answer that.

Q. In the nearby short hauls, it was cheaper, wasn't it?

A. I think it probably was, yes, sir.

Q. Didn't you have instances where dealers would take delivery at your mill in trucks and take the cement into a territory where the delivered price was calculated by rail?

A. The delivered price was calculated by rail all over.

Q. Yes, but taking delivery and transporting by truck enabled them to get the cement there delivered at less than the rate calculated by rail, didn't it?

A. There were undoubtedly some points nearby where that was done.

Q. Your manager, Mr. Larned, in Exhibit 299-B says that this condition of trucking would continue and probably become more aggravated as long as the arbitrary price prevailed at Boston. You have had situations of that sort in the arbitrary price zones, haven't you, where the cement would be trucked out into higher-priced areas?

A. Yes, sir.

Q. What was the effect when cement was trucked

6803 out into those higher-priced areas?

Mr. Leisure: Effect on whom? The dealer's prices? We have been heretofore talking, as I understood the witness, about dealer's prices and not manufacturers' prices.

Examiner Norwood: I think counsel should specify it.

By Mr. Wooden:

Q. I want to know the effect upon both the dealers' price and the manufacturers' price in that higher-priced territory.

A. We have had no instances of that kind that I recall. When you asked me if there had been such instances, I was speaking from information that I had received regarding price conditions that had been reported by our salesmen, but the cement involved in these cases was not our own.

Q. Do you mean to say that you had no difficulty at your own mill from the trucking of cement being taken into higher-priced territory?

A. You mean the territory that you are speaking of and not at the mill?

Q. Well, I am speaking of the mill in that question.

A. They could not haul it in any higher-priced territory if they got it at our mill, because the mill was top.

Q. All right, then. Speaking of those arbitrary
6804 price zones, there it did occur?

A. It would be possible, yes, sir.

Q. How far had cement been trucked in your knowledge and experience from the mill?

A. Well, it is hearsay. The extreme distance that I heard of, Mr. Wooden—

Examiner Norwood: (Interrupting) You need not tell that unless you heard it officially.

The Witness: Officially? I cannot say how I heard it.

By Mr. Wooden:

Q. It is in your general knowledge of the business; that is all that I can expect.

A. I don't think we ever had any cement trucked from our plant that I know of that was further than—well, perhaps 25 miles or maybe 30.

Q. How far is it trucked out of this special arbitrary price zone?

Mr. Leisure: By whom? By the witness' company or by other companies?

Mr. Wooden: As far as he knows.

Examiner Norwood: As far as you know.

The Witness: I don't know.

By Mr. Wooden:

Q. It is trucked by dealers, I assume, and not by
6805 other companies?

A. Yes.

Q. There is a reference made in this Exhibit 299-A, your letter to Mr. Larned, to your checking of the railroad shipments very closely if you ship to any point where diversion could profitably be made. Do you mean a diversion from a lower-priced delivery point to a higher-priced delivery point?

A. That is undoubtedly what I meant.

Q. Have you aimed to prevent diversions in car shipments from low-priced delivery points to higher-priced delivery points?

A. That is true.

Q. Have you made it a policy to sell retailers only for delivery at the points where they had yards?

A. No, sir.

Q. Have you made it a policy to not ship a retailer for delivery into another retailer's town?

A. We have not.

6806 Q. Do you recognize Exhibit 304-Q as a communication of yours to your Philadelphia office on October 8th, 1936?

A. I do recognize it, yes, sir.

Mr. Wooden: I offer it, your Honor. It has been previously identified by an agent of the Commission as coming from the witness's files.

Examiner Norwood: Any objection?

Mr. Loisure: No objection.

(COM. EX. 304-Q was offered and received in evidence.)

Q. How do you reconcile, Mr. Twamley, your last statement with the statement here to the effect that "Hereafter the policy of shipping a dealer only to his own home town will be in effect at all points in the State of Pennsylvania.". And then you go ahead and describe the points in the State, "west of a north and south line drawn midway between Huntington and Altoona."?

A. The explanation is that that is not what we consider our territory. We ship very little cement out there.

Q. But you make reference to the policy of shipping the dealer only to his own home town?

A. Yes, sir.

6807 Q. Is that your policy or is it not?

A. We ship a dealer now anywhere in the vicinity of his home town, within reason. I mean we do not want to ship a dealer in Newark up to New York State, for instance; where that Newark dealer wants the cement shipped to Montclair or Orange or somewhere else in the vicinity, in which case we ship it.

Q. Have you changed your policy since this time covered by Exhibit 304-Q?

A. I think the policy that I have just told you of was in effect at that time in the part of the State of Pennsylvania in which we do business. We may get an occasional car west of that line, but I would say that 90% of our business is done in the other sections of the State.

Q. What do you mean by your reference to being outside of your territory?

A. I mean it is outside of the territory in which we normally do business. The territory west of that line comes under the influence of the Universal Mills, and we cannot go much nearer the Pittsburgh than that line without shrinking too much.

Q. Shrinking what too much?

A. Of our mill net price.

6808 By Mr. Wooden:

Q. Mr. Twamley, what was there in the fact that this Western Pennsylavinia territory was in territory governed by the Universal base that made any difference about shipping a dealer in that territory only to his own home town?

A. That was due to an incident that came up where we shipped a dealer to a point some distance away from his home town, on a W.P.A. inquiry, I think it was, and the dealers at the point of delivery got very angry about it and they called us up and told us what they thought of us. Well, it is a remote district, it means nothing to us, and when we do ship out there we get a very little price, so we said, "All right, we won't bother you any more", and that was the occasion for writing that memorandum.

Q. Did you draw the line that you referred to on the basis of some Dealers Association territory in that area?

A. No, that line was purely my own idea. No one suggested the line.

Q. And as I understand it, it was based upon the fact that beyond that line the business was not particularly attractive anyway in what it netted you?

A. That is right.

Q. Had your company ever taken the lead in es-
6809 tablishing an arbitrary price in the eastern seaboard or to meet foreign competition?

A. I think not.

Q. Do you recognize the paper I show you marked 306-C and D for identification as a memorandum prepared by you?

A. Yes, sir; I think that is mine.

6810 Mr. Wooden: I offer it in evidence, your Honor.

Mr. Leisure: No objection.

(COM. EX. 306-C and D was offered and received in evidence.)

Q. Did you get the information that is contained in that list from the Lone Star Company?

A. I do not remember where we got that.

Q. You did not have salesmen picking up that information at all those points, did you?

A. We had a salesman down there picking up that information at all the points in which we were interested. You have got Virginia points there, have you not?

Q. Yes, some Virginia points.

A. We do not sell cement in Virginia.

Q. Then you did not get the Virginia information from your salesmen picking it up in Virginia?

A. No, I do not think we did, sir.

Q. And you cannot say where you got it?

A. I cannot say where I got it.

Q. Was that about the time the arbitrary prices were put in at Washington and the vicinity?

6811 A. I doubt if they are arbitrary prices. I cannot tell, but I am not at all sure that they are arbitrary prices. They may be based on Norfolk.

Q. Aren't there some arbitrary prices in effect at Washington and nearby points?

A. I do not think so—at Washington—I do not know about nearby points. I think Washington is based on Norfolk. I may be wrong, but that is my opinion.

Q. Are you selling in that vicinity now?

A. Very little. We do not maintain stocks down in Washington.

6812 Q. Aren't there some arbitraries in effect at nearby points around Washington?

A. There are some arbitraries in effect in Baltimore and in points towards Washington outside of Baltimore. I don't know where they stop.

Q. Do you know what your Baltimore price is now?

A. Do you mean the delivered price at Baltimore?

Q. Yes.

A. I would rather not guess. I can make a guess at it, but I am not sure.

Q. You can ascertain that readily, can't you?

A. Yes.

Q. Will you do so?

A. Certainly.

Q. And will you furnish the arbitraries in effect between Washington and Baltimore?

A. Yes, sir.

Q. Did your company have in effect at one time a policy of refusing to sell dealers who were handling foreign cement?

A. Yes, we did have some such policy.

Q. When was it inaugurated?

A. I should say somewhere around 1933, perhaps.

Q. At about that time, did you find other companies in the same area adopting a similar policy?

6813 A. Well, I don't know that they did. Certainly some of them did not; on the other hand, I believe that some of them did.

Q. Can you say which ones did and which did not?

A. I could not draw the line.

Q. Did most of them selling in the metropolitan area of New York adopt such a policy?

A. I have no exact knowledge on that point, Mr. Wooden, but—

Mr. Leisure: (Interrupting) If the witness does not know, I don't think he should be pressed for an answer on that.

Mr. Wooden: He has general information and general knowledge on the subject based on his contacts and experience in the business, if he has not exact knowledge.

Examiner Norwood: He can answer the question to the best of his recollection.

The Witness: Well, I think it was generally in force, some such policy. It was not at any time observed to the extent that there was any scarcity of American cement obtained.

By Mr. Wooden:

Q. Dealers could get all they wanted of American cement if they did not handle foreign?

6814 A. They could get all they wanted of American cement if they did handle foreign.

Q. They got it from such concerns as the National Cement Company of Philadelphia?

A. I believe that was one of them, yes.

6815 Q. Can you name others from whom they could get it while handling foreign cement?

A. Not of my own knowledge, no, sir, I cannot.

Q. At the time you put in that policy there was no arbitrary price in effect in this area, was there?

A. I think there was none, no, no arbitrary, at that time.

Q. Did you issue any notices to your trade that you were adopting such policy?

A. I do not think we did.

Q. Did you issue instructions to your sales representatives to ascertain the stocks of foreign cement on hand at warehouses?

A. I do not think we did.

Q. Did you issue any instructions to your sales representatives to report the names of dealers who were handling foreign cement?

A. I believe we did; yes, sir.

Q. What did you do with such information after you got it?

A. Well, I do not remember that we ever used it to decrease our sales. Our salesmen were instructed not to solicit business from those who were handling foreign cement, but we never had the necessity of refusing orders, because the solicitation apparently of other manufacturers, filled the gap, and with our suspending solicita-
6816 tion of those accounts—they just simply dropped out. However, there were very few, I believe, of our customers, that today handle foreign cement.

Q. Did they discontinue handling it?

A. Why, no, sir, I think some of them have been handling it ever since.

Q. Did you lose such customers to other mills?

A. Well, we may have done so in some instances.

Examiner Norwood: Did you impart that information to any other firms or manufacturers of cement or to the Cement Institute; the names of these dealers?

The Witness: I have no recollection of that, sir.

By Mr. Wooden:

Q. When you say you have no recollection, you mean just that and not that you did not do it, or what?

A. I am of the opinion we did not do it.

Q. How did your salesmen find out what dealers were handling foreign cement?

A. Our salesmen are supposed to be in pretty close touch with our customers. They call at their offices; they see their trucks going out and coming in; every one of our salesmen I believe can tell you the brand of cement that their dealers handle principally.

6817 Q. Did any of your salesmen watch warehouses to see what dealers' trucks took foreign cement out of them?

A. They may have done so.

Q. Did you ask them to do so?

A. That may have been the case. We asked them to get information as to who is handling foreign cement. That might have been one of the methods adopted.

6818 Q. Did you get information as to what dealers were handling foreign cement apart from your own dealers?

A. I cannot say that we did.

Q. Did you have any cases where dealers came to you to buy cement because they had been refused elsewhere?

A. There may have been such cases, Mr. Wooden. I don't recall any specific instances.

Q. In such case, would you check or ascertain whether or not they were handling foreign cement?

The Witness: It is hard to state a policy if no specific instance ever occurred under it, Mr. Wooden. I can tell you what I think we might have done if someone had come and told us he wanted to buy our cement because he could not get any other American brand.

6820 Q. Do you recognize Exhibit 295-E as a communication of your's dated July 12, 1935?

A. Yes, sir, I identify that.

6821 Mr. Wooden: I offer it.

Mr. Leisure: We have no objection.

(COM. EX. 295-E was offered and received in evidence.)

Q. Will you say, Mr. Twamley, that the volume of foreign cement sold is rather small but that it has a pronounced influence on the price?

Mr. Leisure: Now, I think we should let the witness testify instead of counsel testifying.

Mr. Leisure: It calls for a conclusion, your Honor.

Examiner Norwood: There are two questions. I will sustain the objection to the question as framed.

By Mr. Wooden:

Q. Would you say, Mr. Twamley, that the volume of foreign cement sold in your sales territory is comparatively small?

A. It is. I suppose—I have no exact figures—but I should say that it was comparatively a small percentage of the amount of cement used.

Q. Would you say that it has an influence on the price that is greater than the volume of it sold would account for?

6822 A. Very much greater.

Q. Referring to Commission's Exhibit 295-E, did you put out announcements to your trade similar in content to what is described in that exhibit?

A. This is the price in Brooklyn?

Q. Yes.

A. We made no announcement to the trade other than to notify our salesmen operating in this territory what we were doing, and they presumably notified the trade.

Q. Did you obtain at that time the information as to what your competitors were doing with regard to the arbitrary price, through the Institute Trade Practice Committee?

A. I believe we did.

Q. You were unable to put the price reduction into effect at the same date that the other companies put it into effect?

A. Well, we tried to, and I am not prepared to say that we did it exactly at the same time, but we tried to. We tried to get cement on the tracks over there just as quick as anybody.

Q. You confined your deliveries there, as I understand it, to dealers, for sale only, in certain specified counties; is that correct?

A. It started out, I believe, that cement was presumed to be sold only for delivery in Brooklyn, but it

6823 spread, and before we got very far, the limitations were taken off altogether.

Q. Did it spread because of dealers or truckers carrying cement from that low price zone into higher price zone?

A. Yes, that was about the way it came about. There were trucks coming to town with loads, going back light, and they might as well take cement, and a dealer in town down here in Jersey or Westchester County would give an order to the trucker for a quantity of cement to be presented, and later picked up. He made some money, the dealer made some money; everybody made some money but the cement companies.

6824 Q. How would the cement company lose?

A. Well, the cement company cannot make money at that price, Mr. Wooden. At least our cement company cannot.

Q. You got the same price no matter where the trucker or dealer took the cement?

A. Yes, but we lost the profit on the cement which we would have sold down there at higher prices if this trucking proposition had been non-existent.

Q. In other words, they took that cement into territory where a higher delivered price prevailed that you might have obtained if you had shipped in there direct?

A. Yes, sir.

Q. You discontinued, I believe, this stock of cement at Brooklyn that you used to meet foreign cement competition?

A. That was discontinued, yes, sir.

Q. Was it ever restored?

A. It has never been restored as far as I know, certainly we have never restored stock there.

Q. How many companies put in special stock at that place at that time?

A. Well, I have no exact information on that point.

Q. Which ones do you know of?

A. It is strange, perhaps, but you know, I could not tell you who did, because I did not personally go over there and see the cement in store. I believe, if you wish

6825 my opinion—

Q. (Interrupting) Well, I don't want your opinion.

A. I cannot give you any exact information on the point, Mr. Wooden.

Q. Didn't you have reports from your own organzation on it?

A. Oh, yes, we did, but they did not tell us what other concerns or cements were alongside of them. I think you will find that most of the Lehigh Valley plants were over there—I mean the Lehigh Valley brands of cement were over there.

Q. Did you later on after this policy of refusing to sell dealers handling foreign cement was adopted, did you later on take off all restrictions so that it made no difference whether a dealer handled foreign cement or not?

A. We did.

6826 By Mr. Wooden:

Q. What about it, Mr. Twamley?

A. The statement made by Mr. Leisure is substantially correct. We did not solicit the business from those that

we knew were handling foreign cement, and the consequence was, as I think I stated before, that they just simply disappeared, those that we were selling. I am not so sure that they were any of our customers that we dropped. I heard the name of J. P. Duffy & Company mentioned here as one that had great difficulty in buying American cement. We sold him every year in the last ten years, including what must have been the years when this so-called policy was in effect.

Examiner Norwood: You mean to say you did not solicit them but you did not refuse to sell them?

The Witness: That was our general policy, your Honor. Where we got this business from Duffy, I could not say—

6827 I don't know, but I know I looked up my records and we have had business with Duffy in every year without exception for the last ten years; and the same is true of J. P. Callahan & Company, who was also mentioned in the testimony.

Examiner Norwood: But after you had your salesman get you this information, did you refuse to sell them after that?

The Witness: I don't think we ever refused to sell J. P. Duffy or J. P. Callahan.

Examiner Norwood: I mean any of the others.

The Witness: Any of the others? I could not say—I could not give you a specific instance. It might have been so.

6828 Do you recognize, Mr. Twamley, a paper I hand you marked 296-F for identification.

A. I identify it.

Mr. Wooden: I offer it.

Examiner Norwood: Who writes this letter? The

6829 witness?

The Witness: That is my letter, I believe.

Examiner Norwood: And you write that to one of your salesmen, or to whom?

The Witness: I wrote it to the manager of our Boston office.

Mr. Zimmerman: May I ask, Mr. Examiner, that there has been no claim on behalf of the respondents generally that there was not some who filed prices during the period after the Schechter decision, up to the 15th of December, 1935. There is no contention about that.

Examiner Norwood: It is clearly relevant. I do not see any use of discussing it further.

Mr. Zimmerman: Only just this: Are we to keep on interminably, putting in here examples of somebody filing a price during that period?

Examiner Norwood: If this is another respondent that filed a price, I think it should be allowed to go in.

(COM. EX. 296-F was offered and received in evidence.)

6830 By Mr. Wo..en:

Q. Do you recognize exhibit marked for identification 295-C and D, as communications between you and Mr. Larned?

A. I identify those.

(COM. EX. 295-C and D was offered and received in evidence.)

6831 New York City, N. Y.
May 20th, 1938.

6832 JOHN F. NEYLAN, recalled, resumed the stand and testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Neylan, do you have an official in the Lone Star Cement Corporation by the name of Louis R. Ferguson?

A. What do you mean by an official.

Q. Well, an employee, agent or official.

A. We have a man by the name of Louis R. Ferguson, in Texas; yes, sir.

Q. What is his official position in the corporation?

A. He is the vice president of the company, limited, however, I believe, to the Texas Division.

Q. Do you have a man by the name of Charles E. Fontaine?

A. Yes, we have.

Q. What is his position in the corporation?

A. He is sales manager of the Virginia Division.

Q. Mr. Charles L. Hogan is the president of your corporation?

6833 A. That is true.

Q. Mr. J. W. Johnson, do you have a man by that name?

A. Yes, he acts in the same capacity in connection with the Alabama Division that Ferguson acts in the Texas Division.

Q. Mr. H. C. Koch has what position in your organization?

A. He is vice president in charge of sales, I believe.

Q. Do you have a man in your corporation by the name of H. W. Loar?

A. He is sales manager of the New York Division at Albany.

Q. Do you have a man in your organization by the name of J. A. Lehaney?

A. Yes, sir; he is vice president, limited to the Kansas Division.

Q. Do you have a man in your organization by the name of R. J. Mahon?

A. Yes. He is at present—I think he carries the title of General Traffic Manager.

Q. Do you have a man in your organization by the name of Dwight Morgan?

A. Vice President, limited to the Virginia Division.

Q. Do you have a man in your organization by the name of G. R. Pierson?

A. Vice President, limited to the Indiana Division

6834 Q. Do you have a man in your organization by the name of L. A. Sweeney?

A. Vice president, limited to the Louisiana Division.

Q. Do you have a man in your organization by the name of Warren Smith?

A. He is a salesman.

Q. In what location?

A. Chicago.

Q. In the Indiana Division?

A. He not only reports to Indianapolis, but we look upon him more or less as a general man.

Q. Responsible to the New York headquarters office?

A. He reports to the Indianapolis office. Nominally he is under the jurisdiction of the Indianapolis office, but all of his business, of course, is not carried out in connection with the Indiana Division strictly. He is more or less a general man for the benefit of other divisions, but reports to Indianapolis.

Q. But to the degree he is a general man he is responsible to the New York office?

A. No, he reports to the Indianapolis office.

Q. Do you have a man in your organization by the name of M. J. Spring?

A. He is sales manager of the Indiana Division.

6835 Q. G. G. Tomlinson?

A. I don't know what title Tomlinson carries at the present time. He is in the Dallas Office. Whether he carries the title of Local Traffic Manager there or not, I am not so sure.

Q. But he is in the Dallas Office now?

A. He is in the Dallas Office now, yes.

Q. Mr. Ben G. Wallace?

A. He is no longer with us.

Q. How recently did he leave the employ of the corporation?

A. Oh, it must be probably two and a half years.

Q. Mr. L. G. McConnell?

A. He is Vice President, limited, I believe, to the Pennsylvania Division.

Q. Mr. H. Struckman, was he former president of the International Cement Corporation?

A. He was president and general manager.

Q. Until the time of his death?

A. That is true.

Q. At what date?

A. Well, it was some time in the late fall, as I recall it, of 1933. I know he was buried in December, 1933, and he died on the other side, and had to be brought over here and it took some time to do it.

Q. D. S. McBride, is he employed or is he an officer

6836 of your corporation?

A. He is no longer connected with the company.

Q. Was he connected with your company?

A. Yes. He was connected with the company for a number of years in various capacities.

Q. What was his last term of employment?

A. He was more advertising manager than anything else.

Q. Down to what date?

A. Oh, within the last six months.

Q. That is, he left the employment in that capacity six months ago?

A. Yes.

Q. Over what period did he serve in that capacity?

A. I would say six or seven years.

Q. Mr. Neylan, I am showing you papers marked for identification and offered as Commission's Exhibit 958, 1-B and 1-C, and ask you to state what you know about that (handing paper to the witness). Suppose I rephrase my question along this line. Can you identify it?

A. I never saw it before.

Q. Do you recognize that signature?

A. I recognize Mr. Koch's signature. As far as the letter is concerned, I never saw it.

6837 The witness said he never saw the paper marked as Com. Ex. 829 T before. The signature is apparently "Mr. Struckman's" signature, but whether "Mr. Struckman" wrote it or not the witness does not know. He has a reason for saying that. It is apparently a letter from "our" company, but whether "Mr. Struckman" signed it or not witness does not know. It looks something like "Mr. Struckman's" signature. The witness does not recognize and cannot identify the papers marked as Com. Exs.

6838 562 10Q and 10R and Com. Ex. 379 U. He does not recognize and cannot identify the paper marked as Com. Ex. 879 T. He cannot say definitely that the pencil handwriting notes in the corner appear to be file notes made by his file clerks. He does not know whether they appear to be in the handwriting of "Miss Jessup," his Chief File Clerk.

6839 "We never had a man by the name of D. Seller" in the organization during 1935. The witness said he never saw the paper marked as Com. Ex. 879 S. The witness said the signature in the paper marked as Com. Ex. 879 Y appears to be McConnell's signature but the witness never saw the letter. The witness said he never saw the paper marked as Com. Ex. 879 X before. In answer to the question whether he recognized any of the pencil handwriting, he said the same thing would apply. It might be almost anybody's handwriting. He does not know whether it appears to be in the handwriting of Mr. Jessup, his Chief File Clerk. There are several people in "our" office that write similarly. He cannot say whether it is in Mr.

6840 Jessup's handwriting. The witness never saw the paper marked as Com. Ex. 879 W before. He does not recognize and cannot identify the paper marked as Com. Ex. 879 V. He believes that he never saw the papers marked as Com. Exs. 973 1H, 1I, 1J, 1K, 1L, 1M, 1N,

6841 1O, 1P, and 1Q before. He had absolutely nothing to

do with the Clark & Burns Questionnaire and therefore would not be able to state whether or not they appeared to be in his opinion supplemental answers to the Clark & Burns Questionnaire. He does not know who in his organization had anything to do with that. It seems to him it might be handled by almost anybody. He thinks probably some of it was sent out to the divisions and they all probably had a hand in it. He does not recognize and cannot identify the papers marked as Com. Exs. 979 9L, 9M, 9N, 9O 9P, 9Q, 9R, and 936 1Z, 2A, and 2B. The witness identified Com. Ex. 879 3D as looking like a copy of one
6842 of his letters. He thinks he recognizes it as such. He thinks he has seen Com. Ex. 879 2W and 879 2X before. He thinks it is a letter he received or a copy of a letter that he received from Mr. Reiter of the Cement Institute. "I think I received that letter." He does not recognize and cannot identify the paper marked as Com. Ex. 874 M. That is not Lehaney's signature according to witness' recollection of it. He will make the definite statement that that is not Jim Lehaney's signature. The witness does not know whether Mr. Lehaney wrote to other concerns, but certainly if someone wrote Mr. Lehaney's signature,
6843 "he" should put his initial underneath it. He does not recall whether Mr. Lehaney ever had anyone else sign his signature. The witness knows Mr. Lehaney's signature very well because Mr. Lehaney lost two or three fingers on his hand and he has to hold the pen this way "(indicating)" and he sprawls it all over the paper. The witness never saw the paper marked as Com. Ex. 874 L before. He never saw the paper marked as Com. Ex. 874 O before and that is not Jim Lehaney's signature.

"Q. That does not appear to be a reply to 874 L and 874 L a reply to 874 M?

Mr. Leisure: Would that help to identify it in any way?

Mr. MacIntyre: Well, it is possible.

A. I could not identify the letters because I have never seen them before."

6844 He does not recognize the paper marked as Com. Ex. 874 N. He cannot tell whether or not it appears to be a reply to the paper marked as Com. Ex. 874 O.

"Mr. Leisure: Whether it does or not, Your Honor—

Examiner Norwood: He can ask him that." He has not read either one of the letters.

"Mr. Leisure: I must object to that. If the witness has

not seen the letter and never read it, he cannot possibly identify it as being a reply to another letter.

Examiner Norwood: I don't know. He might be familiar with the transaction and recognize the paper. He can look at it and tell us about it.

Mr. Leisure: I don't see how this witness, never having seen a paper, can add to its identification."

He does not recognize and cannot identify the papers marked as Com. Ex. 874 S and 874 T because he never saw them before. He does not recognize and cannot identify the paper marked as Com. Ex. 874 Q. He knows absolutely nothing about this exchange of correspondence, that is, whether the paper marked as Com. Ex. 874 P is a reply to that letter marked as Com. Exs. 874 S and 874 T. He
6845 does not recognize and cannot identify the paper marked as Com. Ex. 879 3P. He does not ever recall seeing the letter marked as Com. Ex. 868 7K, although
6846 that signature looks like Mr. R. H. Mahon's signature. He does not recall ever having seen Mahon's signa-
6847 ture. The witness identified Com. Ex. 919 2W, 2X, 2Y and 2Z as looking like a copy of his letter to Mr. Reiter; Com. Ex. 585 Q, R and S as looking like a copy of his letter. He does not know whether or not the paper marked as Com. Ex. 585 U is a reply to his letter. No, it is not. This telegram is in June and this letter is in August; so "this" can hardly be a reply to "this." His recollection is he wrote the letter but not the telegram. He does not know whether or not there is any connection between
6848 the letter and the telegram. He does not believe that the telegram marked as Com. Ex. 585 T has anything to do with "that letter either one of the other telegrams." "This pink copy looks like a response to this telegram here. This looks like—585 T—seems to be a response to 585 U." Com. Ex. 585 T is apparently a copy of a telegram from witness's concern. It is marked by "our" company but he does not recall ever having seen either one of these
6849 two before. He has never seen papers marked as Com. Exs. 919 1D, 919 1E, 919 1B and 919 1C before.

"Q. Do they appear to have any relationship to any in the group that you have seen?

Mr. Leisure: Your Honor, that is merely surmise. Do they appear to have any relationship? The witness' guess won't make them any better if he never saw them before.

Examiner Norwood: I take that to be an inquiry as to

his opinion, and if he does know anything about them, there is no harm in it."

They did not appear to have any relationship to any
6850 in the group that he has seen. Com. Ex. 919 2T looks like a copy of his letter to Mr. Reiter. The witness's name is "on there" and he has written a good many letters to Mr. Reiter; so he will accept it as such. The witness identified Com. Ex. 919 N as a copy of a letter from Mr. Reiter which apparently reached witness on which the witness's name is checked off on the office stamp. He does not recognize and cannot identify the paper marked as Com. Ex. 919 1M. There is nothing "on here" that shows that he had ever seen it. Even the office stamp does not show that
he checked it off. He cannot recognize that as the let-
6851 ter itself. The witness identified Com. Ex. 919 1L as looking like a letter from him to Mr. Reiter in June, 1935; Com. Ex. 919 1K as a letter from Reiter to him. In reply to the question whether witness can recognize
6852 or identify Com. Ex. 585 2D as a copy of a letter from the Chairman of the Trade Practice Committee to R. B. Soldeni of Monolith, the witness said there is no signature "on here," and while he may have seen the letter, he could not swear that he had seen the letter. He could not say definitely that he recognized it as a copy Mr. Reiter sent to him of a letter which was submitted by witness' company to the Commission under subpoena. The witness was a member of the Trade Practice Committee as of July
6, 1935. He does not recognize and cannot identify
6853 the paper marked as Com. Ex. 585 2C. He cannot recall papers marked as Com. Ex. 585 2E. He does not
6854 know whether he ever saw it or not. He does not recogniz and cannot identify the paper marked as Com. Ex. 919 2L as it stands. He does not recall ever having seen it. "Again it is in the same category." Here again the witness' mark is not on the letter which is the customary thing to do. It is always possible he was out of the office or that someone else received the letter or it never reached "us." He does not know. He does not recognize and cannot identify the paper marked as Com. Ex. 919 2K. "That is about in the same category as the other." He does not recall the paper marked as Com. Ex. 919 2D. In reply to the question whether he recalls any of the incidents discussed in the letter as matters with which he concerned

himself, he said, "I cannot recall the incident as of
6855 1935. We have been recalling that incident as far as I can remember back to 1929 and we are still in the throes of it right now." He does not recognize and cannot identify the paper marked as Com. Ex. 919 2I. He never saw the papers marked as Com. Ex. 585 8E, 919 3C and 919 3B before. He recognizes Tomlinson's signature "here," but that is the only one he recognizes. He never saw this other signature. Witness said in reply to the question which exhibit is that: "That looks like 885 8E." "That looks like Tommy's signature." In reply to Mr. Zimmerman's
6856 question that Com. Ex. 885 8E is dated January 15, 1937, and is stamped "Received January 18th, 1936"
6857 the witness said he does not know. He never saw any of them. "That is, on those others there." Com. Ex. 585 A looks like a copy of witness' letter dated October 30, 1935 to Mr. Reiter. The witness said he never saw the papers marked as Conr. Ex. 422 N and M before. He
6858 does not recognize and cannot identify the letter marked as Com. Ex. 422 L; the signature looks like "Mr. Struckman's" but witness never saw it before. "Mr. Struckman" was at that time president of witness' company. The witness identified Com. Ex. 422 I, J and K as a copy of his memorandum to "Mr. Struckman," dated May 8, 1933. He recognizes the signature.

"Mr. Leisure: Your Honor, referring to this Exhibit 422 L, there are a number of these exhibits that raise the question that Mr. Zimmerman raised a moment ago as to what purpose the exhibit is being offered for. This one says:

"Dear Mr. Rooney: Many thanks for your letter of May 2nd and for the enclosure referred to therein, which I shall read with much interest. Hoping to have the pleasure of seeing you at the Association meeting and with kindest regards, I am."

6863 The witness said he never saw the letter marked as Com. Ex. 422 G and H before. The signature of the writer looks like "Mr. Struckman's" signature, as witness recalls it, but he could not say that it is actually "his", however. The witness identified Com. Ex. 422 B, C, D, E and L as looking like a copy of his letter. He recognizes "this" as a letter addressed to Harold S. Cree, but it was turned over to "Mr. Struckman". The witness

turned over "every particle" to "Mr. Struckman." The witness does not know what "Mr. Struckman" did
6864 with them. The witness never saw the paper marked as Com. Ex. 422 A before. It looks like Mr. Hogan's signature, however. The witness does not recall ever having seen the paper marked as Com. Ex. 585 2F. The witness does not recall those particular letters marked as Com. Ex. 585 2G and 2H. Those are not witness' initials on the front sheet. The witness assumes that "CLH" stands for C. L. Hogan, "and this is JFN, but I do not recall the letter." That letter does not appear to be a reply to Com. Ex. 585 2F which had just been shown to witness.

6865-6866 *Examination by Mr. Leisure.*

In reply to the question whose writing appears in Com. Ex. 585 2G, the witness says it is not his. He does not know; there is not enough of it really to identify who put those initials thereon. "You understand that it is always possible for someone to mark a letter for me and if I am not in the office check me off, or they could bring it up on a follow-up, I don't know."

Examination by Mr. MacIntyre.

The filing symbols in the upper right corner of the two exhibits looks to be in the same handwriting. The witness cannot say that he recognizes that as the handwriting of Miss Jessup, his chief file clerk, for the reason he gave before. That is, "there are several people around there that have rounded backhand writing." The witness recognizes the file symbols as fitting into a system of filing used by International at that time. As a matter of fact, he recognizes "this" office stamp on "this" letter marked as Com. Ex. 585 2F. In reply to the ques-
6867 tion whether Com. Ex. 585 2F appears to be a reply to Com. Exs. 585 2G and 585 2H, the witness said "2F really referred to a letter of the 3rd, and in the letter of the 7th, which is 2F, there is reference made to a letter dated October 3rd and this is a copy of a letter dated October 3rd. He never recalls having seen the letters.

Q. Mr. Neylan, did your company own and operate a cement mill at Limedale, Indiana?

A. We do.

Q. Does any other cement manufacturer operate a mill at that location?

A. Not that I know of, no, sir.

Q. How about New Orleans, Louisiana?

A. We operate a mill at New Orleans, yes, sir.

Q. Does any other cement manufacturer operate one at that point?

A. Not that I know of, no, sir.

Q. How about Bonner Springs, Kansas?

A. We have at Bonner Springs, Kansas.

Q. Has any other manufacturer a plant at that location?

A. Not at Bonner Springs.

Q. How about Dallas, Texas?

A. We operate a plant at Dallas, Texas.

Q. Does any other manufacturer operate one at that point?

6868 A. Yes, sir.

Q. What mill?

A. The Dallas mill of the Trinity Portland Cement Company.

Mr. Leisure: Your Honor, on two exhibits that are marked for identification here, there are pencil notations to the effect, both of them say, "Corroborating Governor Horner's charges." Are those being offered with the pencilled notations?

Mr. MacIntyre: They are offered with all writings on them except, of course, the identifying mark, and that is offered as the Official Reporter's identifying mark.

Mr. Leisure: Unless the pencilled notations are identified, we object to their being offered.

Mr. MacIntyre: They were on there before they were turned over to the Official Reporter for identification, when they were submitted under subpoena.

Examiner Norwood: I shall consider that in receiving them.

Mr. Zimmerman: Isn't it obvious that such conclusions ought not to be put on exhibits, unless there is something showing as to who put it on?

6869 Examiner Norwood: That, it seems to me, should be eliminated at the time.

Mr. Zimmerman: I think it ought to be physically removed before the exhibits were even considered.

Q. Mr. Neylan, does your concern own and operate a cement mill at Houston, Texas?

A. It is spoken of as Houston, yes.

Q. In the vicinity of Houston?

A. Yes.

Q. Is there any other cement mill operated in the vicinity of Houston?

A. Yes, sir.

Q. What mill?

A. The Houston mill of the Trinity Portland Cement Company and a new mill known as the Gulf Portland Cement Company.

Q. I believe you testified for the record that you own and operate a cement mill, that your company does, at South Norfolk, Virginia?

A. We do.

6870 Q. Is there any other cement manufacturer operating a mill at that location?

A. No, sir.

Q. What about Spocari, Alabama?

A. We have a mill there at the present time that is not operating.

Q. Any other manufacturer operate a mill at that location?

A. No.

Q. What about Hudson Upper, New York? Do you have a mill at that location?

A. We have a mill at Hudson Upper; yes.

Q. Any other cement manufacturer have a mill at that location?

A. Not at the same location; but there is a mill right close to it.

Q. Located at Hudson Upper?

A. I don't know whether you call it Hudson Upper or Hudson Lower. It is in the town of Greenport, as I recall it.

Q. Is it within the community known as Hudson Upper?

A. I don't believe there is such a community as Hudson Upper. One refers to the Upper Station and the other to the Lower Station.

Examiner Norwood: Does anybody know what you mean when you say Hudson Upper?

6871 The Witness: It means the station at the top of the hill; yes.

By Mr. MacIntyre:

Q. Do you own a cement mill only at the top of the hill?

A. Yes.

6872 Q. Does any other cement company have a mill in that location?

A. The Atlas operates one at Hudson, yes.

Q. Hudson upper?

A. I don't know whether you would call it Hudson upper or not. They are back in the hills. They operate in the same hill that we get our stone out of.

Q. Isn't that commonly referred to as Hudson, or Hudson lower?

A. Both of them are referred to as Hudson. We specifically refer to our mill at Hudson upper.

Q. To distinguish the location from what?

A. To distinguish the location of the other mill.

Q. And at that particular location of your mill there is another mill adjoining?

A. Well, the Atlas Company is pretty close to it there. We operate exactly at the same place, Beecraft Mountain there.

Q. What about North Birmingham, Alabama? Do you own and operate a mill at that location, your company?

A. Yes.

Q. Does any other company operate one at that point?

A. There are three plants around there. I don't know whether you call it North Birmingham—the Lehigh Company, right close to us.

6873 Q. Isn't it known as the Boyles mill?

A. We ship from Boyles too.

6874 Q. Calling attention to papers marked for identification as Commission's Exhibits, 975-5-M to 975-6-F, which is one of the so-called Clark-Burns questionnaires, having on 975-5-M the designation of mill location North Birmingham, and on 975-5-X the lists of mills owned and operated by the company who purports to own and operate the mill at North Birmingham, the key number of which is shown on 5-M as 322, I will ask you to state if your company owns and operates mills at locations shown on 5-X?

A. Yes, we do.

Q. Do you know of any other cement manufacturer operating one at New Orleans, which is the location of one of the mills shown on 5-X?

A. No, I do not.

Q. I now show you papers marked 969-3-S to 969-4-H, which is one of the Clark-Burns questionnaires, carrying mill key number 218 on 3-S, showing location of mill Hudson Upper and locations of the mills owned by the same company on 4-D, and ask you to state if you have mills on those locations shown on 4-D.

A. Of course, some of these locations are not right. We have no mill at Greencastle, Indiana.

Q. Isn't that sometime referred to as Limedale?

A. I don't see how you can refer to Greencastle
6875 as Limedale. They are two separate communities.

Q. Have you got one at Bonner Springs, which is shown on the list?

A. Yes.

Q. Does any other manufacturer have one at that point?

A. At Bonner Springs? No, sir; not that I know of.

Q. I now show you papers marked for identification and offered as Commission's Exhibits 976-1-A to 976-1-T inclusive. On 976-1-A appears mill key number again—it is a Clark-Burns questionnaire—appears a mill key number 394, and mill location Houston, Texas; and on 976-1-L a list of the locations of the mills owned and operated by the same company; and I ask you if they appear again—except for Greencastle—to be the locations of the mills owned and operated by your company?

A. There is Kansas City on here. I don't want to be technical on the thing, but when you put a question to me that way I have to answer it the way you put it.

Q. How far from Kansas City is Bonner Springs?

A. Eighteen or twenty miles.

Q. It is the only sizeable town around Bonner Springs, isn't it—Kansas City?

A. Kansas City, Kansas, and Kansas City, Missouri, are two sizeable towns, which are adjoining. Topeka is not so far from Bonner Springs, either, which is not a bad sized town.

6876 Q. I now show you papers marked for identification and offered in evidence as Commission's Ex-

hibits 976 13-V to 976 14-O inclusive, which is also a Clark-Burns questionnaire, on the face of which appears mill number 393 and mill location Dallas, Texas; on 14-G the lists of mills owned and operated by the same company and ask you to state whether or not that is a list of locations or substantially so, of the mills owned and operated by your company?

A. Again they have Kansas City, Mo. on here. I won't question that. As a matter of fact, I could question Dallas and Houston there. They are not strictly in the cities. Dallas it is at Harris, Texas, and Houston is at Manchester.

Q. Which are in the vicinities of those two cities?

A. Yes, they are close to the towns.

Examiner Norwood: The mills are near the cities, within a few miles up?

The Witness: Yes.

Examiner Norwood: Do not the same freight rates obtain as from your mill as from the cities?

The Witness: No, not usually, because the rates apply from the mill and not from the city. Freight rates are usually put in from the producing point.

By Mr. MacIntyre:

6877 Q. Mr. Neylan, do not the freight rates of the Cement Institute carry, in some of these instances, the name of the town adjoining, the town rather than the community of the mill location which is a community adjacent to the town?

Mr. Leisure: The books are all in evidence, your Honor.

A. I think that is true, at Houston. That recalls to my mind that the Houston rates are shown. I think Harris is usually mentioned and Eagle Ford is specifically mentioned.

Q. What about Hudson and Hudson Upper?

A. You would have practically a blanket rate from those two towns. If there was any difference in the rates they probably would show them both.

Mr. MacIntyre: If your Honor please, we are ready to release the witness from this call, unless your Honor feels that the identification of these documents can be added to by further questioning of the witness.

Examiner Norwood: That is for the counsel to decide.

Mr. MacIntyre: I mean so far as you are concerned, do

you care to put any further questions to him? Or the respondents' counsel? Concerning identity?

6878 Mr. Leisure: I would like to have the right of deferred cross-examination of this witness on the questions that have been asked this morning. Most of the things, under ordinary procedure, we would have had as we went along, the opportunity to determine whether we would have to question him; and I would like to have that opportunity.

Mr. MacIntyre: If the cross-examination has to do with the identification of the documents, based on questions asked the witness this morning, then we ask that it not be deferred. If it is to involve other questions, we contend it is outside the direct examination, going to the identification of the documents, and if questions of that nature are to be propounded to the witness by the respondents' counsel, he should become their witness for that purpose, because it has not been included in the direct examination of the witness this morning.

6900 (COM. EX. 919-2T was offered and received in evidence.)

6903 JAMES F. TWAMLEY, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Twamley, referring you to Exhibit 295-D, which you identified and which was admitted in evidence yesterday, I note the statement there, your statement, that: "It will be our policy not to solicit or accept business from dealers handling foreign cement." Was that a continuation of your previously formed policy, or the announcement of a new policy?

A. May I ask the date?

Q. September 10, 1935.

A. I should say then it must have been a continuance.

Q. Reference is made in the same exhibit to the question of diversions coming up in view of the difference in the price between Boston and interior points. Was that difference in price the difference between the so-called arbitrary price in Boston and the price at interior points

arrived at by figuring, combining the freight rate and the base price?

6904 The Witness: I have the question in mind, I think. I will say in reply to that, Mr. Wooden, that while I cannot say definitely what the price scale was around Boston at the time this letter was written, there were a number of special prices outside of Boston. The Boston price I think was the lowest, and then as you proceeded westward, the price gradually increased, so that perhaps thirty miles from Boston, or forty miles, you might find a price that was not based on a mill

6905 price—which is part of your question as I recall it,—therefore I cannot say that that would apply; I do not know.

By Mr. Wooden:

Q. In other words, the diversion may have gone into the higher priced territory but still territory where arbitraries prevailed?

A. That's true.

Q. Do you know how those arbitrary prices were formulated as to the difference between them at different points?

A. I do not know. Do you wish an opinion?

Q. Well, you used them, as I understand it, and adopted those arbitrary prices; and I would like to know whether you did it blindly, or whether you—

A. (Interrupting) We did it blindly, because in every case we found the prices and we met them. We had no rhyme nor reason in respect to the amount that we charged. We just met the price we found was being quoted at certain destinations. If you wish that opinion, I am ready to give it to you.

Q. I would like to know, based on your experience in the matter, if you saw any system or rhyme or reason in the relationship between the prices at the different points in the arbitrary zones?

A. I think that they started at Tidewater at

6906 the port with the lowest price, and as you proceeded inland the prices were increased to approximately equal the cost of transportation.

Q. By what method?

A. By truck from alongside the dock wherever the storage might have been.

Q. And the cost of transportation by truck varies considerably between different truckers, doesn't it?

A. Oh, yes; I believe it does.

Q. Do you know anything further as to what basis of truck transportation was used?

A. I have no knowledge as to that.

Q. Will you identify the paper marked for identification 296-D (exhibiting paper to witness) as a communication of yours to your Mr. Larned, November 18, 1935?

A. I have no recollection of having written this, but I do not question it. If it was taken from our files by Mr. Brown, it is authentic.

Q. Yes, it was previously identified by Mr. Brown as coming from your files.

A. All right.

6909 (COM. EX. 296-D was offered and received in evidence.)

Q. Who was the man Kingsley that is referred to in the document, Mr. Twamley?

A. Mr. Kingsley is a dealer in building material at New Befrod, and I think he may also have a place at Fall River. I know he has, at times, had yards at both points.

Q. Was one of the yards in the low price zone and one of them outside?

A. I think they were. They might both have been inside.

Q. All right.

A. I am not sure.

Q. What I had in mind was whether he was taking delivery at one yard, within a low price zone, and then taking it over into his other yard which might have

6910 been outside the low price zone?

A. I do not think they were that far apart. I think probably they were both affected by those special prices. May I look at that again? Perhaps there is some reference there.

Q. You mentioned New Bedford and Fall River. Were —with those points in mind, can you tell me whether one of those points was within the low-price zone or both of them?

A. I think, Mr. Wooden, that there have been variations in the amount of territory taken in by this low price zone at different times.

Q. There was one change made there?

A. Yes sir; and I would hesitate to make a definite statement regarding the price in effect on the 18th of November, 1935, but I think that probably both Fall River and New Bedford were in that territory where there was some reduction made from what we call the full delivered price, the mill base plus freight.

Q. Even two yards within that zone would have different prices at different points?

A. Oh, yes.

Q. And be affected to that extent to a different degree by the situation?

A. Yes.

Q. Can you name any others on the border
6911 whose activities were similar to those of Kingsley?

A. I don't remember any.

The witness in reply to the question whether he identifies Com. Ex. 296 A, B and C as a list of prices quoted by his company to various dealers in various towns in Massachusetts, New Hampshire and Rhode Island, said "This is not signed." It is simply in the nature of a memorandum. He has no recollection of ever seeing it before. He said his company had a clerk in the New York office whose initials were S.I. He does not recognize "it" as one of the papers that Mr. Brown obtained from him. The witness has no recollection of it at all.

Mr. Wooden: Your Honor, I didn't wish to offer this particular thing, I have no objection to offering it, but I did want to call the witness's attention to it, the Kingsley quotations at two different points.

Mr. Leisure: Well, now, your Honor—

Examiner Norwood: Let the witness look at it, there shouldn't anything go in the record with regard to
6912 its contents until it is received.

Mr. Wooden: I am going to offer the paper and I do offer the exhibit on the basis of the previous identification by our Mr. Brown, plus the witness's description and identification of the initials that appear on the paper.

Examiner Norwood: Did you ask him a question based on his reading that?

Mr. Wooden: No. I took the other tack of making the offer on the basis of the previous identification, plus what he has added to it.

Mr. Leisure: May we see it, please?

(Witness hands paper to Mr. Leisure.)

(Discussion off the record.)

Examiner Norwood: Does reading that letter refresh your memory regarding its identity in any way?

The Witness: No, your Honor. I don't recall ever having seen it.

Examiner Norwood: You don't recall the subject of the letter?

The Witness: It gives a list of prices. It has a brief line of introduction and then follows a list of prices at various railroad stations.

Examiner Norwood: You have no idea where it came from or whether you ever acted on any of those prices or not?

6913 The Witness: It was instructions, apparently, from our New York office here to our Boston office, and I know nothing more about it.

Examiner Norwood: Are there any objections?

Mr. Leisure: I will have to object to it at this time. I would like an opportunity to check it and see what it is. I object to it as being incompetent, irrelevant and immaterial at the present time.

Examiner Norwood: Your objection is overruled, and the exhibit is received subject to check. That is 296A, 296B, 296C.

(COM. EX. 296A, 296B, and 296C was offered and received in evidence.)

Mr. Leisure: Your Honor, receiving it subject to check may not answer our purposes as to the objection. We may want to cross-examine upon it.

Examiner Norwood: Well, you may do so now, or when the witness is turned over to you. It is nothing but a price list, and I see no reason why it should not go in. It is identified as coming from these files, as you have heard.

By Mr. Wooden:

Q. Can you say, Mr. Twamley, with a difference of two cents a barrel between your price at New Bedford and at Fall River, there would be the likelihood of any trucking from the low price point to the high price point?

Mr. Leisure: I object as to what there would be
6914 a likelihood of happening. The witness can testify as to what happened. As to his surmise as to what might happen, I don't think we ought to spend time on that.

Examiner Norwood: Objection overruled. Answer that.

A. A difference between the two towns of two cents a barrel certainly would not permit trucking. They could not move cement half a mile for that. You couldn't load it on the trucks, perhaps.

Q. That is what I wanted to get. Showing you Exhibit 296-J for identification, previously identified by Mr. Brown, will you identify it as a communication received by you from your manager, Mr. Larned, your Northeastern manager?

6915 A. I do.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Zimmerman: I have only the same objection I had made to that entire line, so far as the respondent Marquette is concerned.

(COM. EX. 296-J was offered and received in evidence.)

Q. There are some figures inserted in longhand between the lines, between the first, second and third lines, Mr. Twamley. Can you say whose figures those are?

A. No, I don't recognize them. Possibly someone in the office.

Q. In this exhibit your Mr. Larned writes you that he didn't find in your arbitrary price list any price for certain towns, and he asked you to check and advise

6916 immediately. How did you go about checking and finding the arbitrary prices at the towns that were not on your arbitrary list?

A. All we could do would be to look up our records in the office and see if those towns had been omitted by oversight in sending Mr. Larned his advices.

6917 Q. Did you obtain any information from outside sources as to what the proper arbitrary price at those towns was?

A. I am not sure that there was an arbitrary price. That is what he complained of.

6918 Q. I show you a paper marked 295-A for identification, previously identified by our Mr. Brown, as coming from your files. Will you further identify it as a communication of yours to Mr. Stewart?

A. I identify that.

Mr. Wooden: I think there was an exhibit offered just before this first recess.

Examiner Norwood: Yes. Is there an objection to the exhibit?

Mr. Leisure: We have no objection.

Examiner Norwood: Received as marked.

(COM. EX. 295-A was offered and received in evidence.)

By Mr. Wooden:

6919 Q. Referring to this exhibit, reference is made by you, in this exhibit, Mr. Twamley, to importers of cement insisting on spot cash. Did that constitute a further handicap to the sale of foreign cement by contrast with the domestic manufacturers selling on a credit basis?

A. I think it would.

Q. I notice your statement that none of the large dealers in New York is handling foreign cement. Was there a time when some of the larger dealers did handle it?

A. Yes, sir.

Q. Is it still the case that none of the large dealers is handling it?

A. I am not positive on that point, but I do not know of any large dealer that is handling foreign cement; there may be.

Q. Showing you a paper marked for identification 303-D, will you identify it as a document from your files, a copy?

A. While I had nothing to do with this memorandum, I do not wish to question its authenticity.

Q. Who is Spencer Churchill?

A. Spencer Churchill? He is a salesman living in Baltimore.

Q. Your salesman?

A. Yes, sir.

Q. And Mr. Loughran?

A. Yes, sir. He is in our New York office.

6920 Mr. Wooden: I offer the paper, your Honor.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Zimmerman: I take it the purpose of this is to show identical bids?

Mr. Wooden: I should say that is the main purpose, at least.

Mr. Zimmerman: I shall object so far as the respondent Marquette is concerned. There is no showing they had any part in the transaction whatsoever, or that anyone had any part in it except those that are mentioned in the letter.

(COM. EX. 303-D was offered and received in evidence.)

Q. Mr. Twamley, did you, or did your concern, put out a circular notice to your dealers, along in the Winter or Spring of 1935, describing what classes of business you would recognize as belonging to the dealer, and what classes you would regard as business for your concern selling direct?

A. I think we did.

Q. Can you say, in a general way, whether your
6921 announcement was the same or similar to that put out by other manufacturers?

A. I didn't see all of the other manufacturers', Mr. Wooden.

Q. You say you did not see all of them, or any of them?

A. No, I couldn't say it was the same as the other manufacturers'. I do recall that that policy was not exactly reinstatement of conditions which had existed under the Code, but something approximating that, I think. There was an article in the Code which had to do with the classes of work which would be sold by manufacturers through dealers.

Q. That article was suspended, however, wasn't it?

A. Yes, sir, that was suspended. The dealers were dissatisfied with it and they succeeded in having it suspended, and then for some months we ran along without any defined policy at all. And this circular that you speak of was intended to bring about some definite understanding that the dealers could count on some business, because until the policy was adopted, some policy of some kind was adopted, it was hit or miss, and a manufacturer had no restrictions at all as to the class of trade he would solicit for direct business.

6922 Q. Did the statement of your policy at that time approximate what had been provided for under the suspended article of the Code?

A. It was not exactly the same, but I think there were a number of features in it that were the same or practically the same as had been in effect under the Code. The Code was still in effect at that time, you know.

Q. Yes. Will you state what differences there were?

A. Oh, I couldn't say what differences there were.

Q. Did you put out a second circular following the first by a period of some weeks?

A. A second circular?

Q. Yes.

A. We may have; but I haven't any clear recollection of that.

Q. Will you provide and produce a copy of the circulars you issued at that time?

A. You mean the first one?

Q. Well, if you put out a second one, will you produce that too?

A. Yes. I do not think we put out a second one, but we did put out a first one.

Q. Along in February or April, 1935?

A. In February, I think it was, in 1935.

Q. Then if you did put out a second one, you will
6923 get that one also?

A. Yes, sir.

Q. Do you have at this time, Mr. Twamley, any of the information that I asked you yesterday if you would produce?

A. I have given some papers to the gentleman at my right. That is what you referred to?

Q. I suppose so.

A. Yes.

Q. What were they?

A. A list of prices of Maryland and a copy of the quotation form. Is that all?

Q. Do you mean that you furnished those to counsel for the respondents?

A. Yes.

Mr. Wooden: Are they available at this time?

Examiner Norwood: Off the record a minute.

(Discussion off the record.)

Mr. Leisure: We now produce the papers turned over to us by the witness.

(Papers handed to Mr. Wooden.)

Mr. Wooden: Thank you.

6924 Mr. Wooden: I will offer at this time, your Honor, a paper marked 1134 for identification, being a blank quotation form produced by the witness and submitted by counsel.

Examiner Norwood: Any objection?

Mr. Wooden: There is printing on the reverse side. We had better make that A and B for marking.

Examiner Norwood: Just make it A and B. Any objections to that, 1134-A and B?

Mr. Leisure: No objection.

(COM. EX. 1134-A and B was offered and received in evidence.)

Q. I would like to ask you if Exhibit 1135, C to E, is a list of arbitrary prices in effect between Baltimore and Washington?

A. They are arbitrary prices in effect in the State of Maryland.

Q. Does that include all the prices between those points?

6925 A. It is all the prices in the State of Maryland. I don't know about the District of Columbia.

Q. Can you specify which of them are arbitrary prices and which are not, or would you undertake to do that? I am interested only in the arbitrary prices.

A. I think they are all arbitrary prices.

Q. In the State of Maryland?

A. Well, these that are on this list. I think so; otherwise there would be no use in furnishing a list.

Q. I did not want anything else, as a matter of fact. I am not asking for anything except the arbitrary prices.

A. I think that is a complete list.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No obection.

(COM. EX. 1135-A to E inclusive was offered and received in evidence.)

6926 New York City, N. Y.
Tuesday, May 24th, 1938

6927 Examiner Norwood: The hearing will come to order.

Pursuant to the adjournment of May 20th, 1938, the hearing in Docket 3167 is now reconvened in Room 605 at 36 West 34th Street, New York City, N. Y., at 10:00 o'clock a. m., Daylight Saving Time.

The appearances are the same. It is now in order for the respondents to cross examine Mr. Neylan as to the identification of these papers which I am going to rule on in a few minutes.

Mr. Leisure: We have no questions at the moment, your Honor.

6929 (COM. EX. 912-2W to 2Z was offered and received in evidence.)

6930 (COM. EX. 919-K, L and N was offered and received in exidence.)

(COM. EX. 919-3-B and 3-C was offered and received in evidence.)

(COM. EX. 879-3-D, 1-Y, was offered and received in evidence.)

(COM. Ex. 829-T was offered and received in evidence.)

(COM. EX. 585-Q to S inclusive was offered and received in evidence.)

(COM. EX. 585-A was offered and received in evidence.)

(COM. EX. 958-B and C was offered and received in evidence.)

(COM. EX. 885-8-E was offered and received in evidence.)

6931 (COM. EX. 879-2-W was offered and received in evidence.)

(COM. EX. 879-2-X was offered and received in evidence.)

(COM. EX. 868-7-K was offered and received in evidence.)

(COM. EX. 585-FF was offered and received in evidence.)

(COM. EX. 422-A-G and H was offered and received in evidence.)

(COM. EX. 422-I, J, K was offered and received in evidence.)

(COM. EX. 422-B to F was offered and received in evidence.)

(COM. EX. 422-L was offered and received in evidence.)

6933 ELSIE EAVES, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am and have been manager of the Business News Department of the Engineering News Record since July 1932. The Engineering News Record is a professional magazine published weekly for engineers and contractors. In addition to engineers and contractors we have as subscribers some manufacturers, particularly those who are sell-

6934 ing to engineers and contractors. We have cement manufacturers among our subscribers and a limited number among our advertisers.

Q. Have you had advertisements in your publication from the Portland Cement Association?

A. Yes.

Q. Have you had any from the Cement Institute?

A. I can't say. I am not informed on that.

Q. Does the Engineering News Record publish from time to time basing point prices on cement?

A. I am not informed of their basing point prices. We publish cement prices, but I am not informed as to whether they are basing point prices.

Q. How often are they published?

A. One each month.

Q. In any particular issue?

A. Yes, the first issue of each month.

Q. The first issue of each month?

A. Yes.

Q. How long have you been publishing such prices?

A. I am not informed on that. It has been a long

6935 period. Long befor—

Q. Continuously?

A. Continuously.

Q. Since you are in the department that you are now in?

A. Yes.

Q. What are the sources from which you obtain the information as to cement prices?

A. To which prices are you referring?

Q. The manufacturers' prices.

A. Well, we write direct to the manufacturers for those.

Q. Do you write every month?

A. Yes.

Q. What manufacturers do you write to?

A. We write to Alpha Portland Cement and Penn-Dixie and Lehigh, and Universal Atlas and Lone Star Portland Cement Company.

6941 Q. Do you know how it came about that you obtained your information from these five concerns that you have named?

A. No, sir, I do not.

Q. Can you say who, in your organization would know?

A. I do not know. My predecessor is no longer with the organization.

6942 Q. Is the information received from the five companies in the form of a letter or merely in a memorandum?

A. It varies from time to time. Usually it is our own form letter returned with just a note "change" and an initial and the date. That is the prevailing form, but it varies.

Q. And if there is a change, then what is the procedure?

A. The change is noted—I mean in the same way—noted there on our form letter, and the form letter returned.

Q. Miss Eaves, I am showing you page 27 of what purports to be the Engineering News-Record of April 7, 1938. Will you identify it as such?

A. Yes, sir.

Q. In the middle of that page there are some fig-
6943 ures headed "Current Maximum Prices Received at Cement Mill." Will you identify those prices as the prices that you receive in the way that you have described, and publish from month to month?

A. Yes, sir.

Mr. Wooden: Your Honor, I would like to offer in evidence this page of the Engineering News Record, containing the prices that have been referred to, but excluding all the other material on the page except the heading showing what it is. The page has been marked 1136 for identification.

6945 (COM. EX. No. 1136 was offered and received in evidence.)

6948 *Cross-Examination by Mr. Zimmerman.*

Q. Miss Eaves, the Engineering News Record which has been exhibited to you, and one page of which has been offered in evidence as Commission's Exhibit 1136, that publication attempts to cover news items in relation to current prices of all materials and labor going into construction enterprises, does it not?

A. I should have to qualify that to all basic materials. There are a great many specialties that we cannot cover.

Q. Just go ahead and say what commodities are included.

A. We include cement and other concrete aggregates, ready mixed cement, asphalt, asphalt products, of pipe,

vitrified clay, concrete, cast iron, steel, number and various sizes, ties, explosives, roofing,—did I say steel—
6949 structural and reinforcing, and some of the steel specialties.

Mr. Wooden: Did you include lumber?

The Witnesses: Yes. And on the wage rates—we also include brick, lime, hollow tile—and you are not interested in the wage rates?

By Mr. Zimmerman:

Q. If you publish them, I would like to know what the purpose is.

A. Yes, we publish bricklayers, carpenters, structural iron workers, hoisting engineers, plasterers, and two grades of common labor, one used on the building work and one used on the heavy construction.

Q. These prices that you refer to are not intended to cover the entire country completely, are they?

A. No, sir; we have to choose a limited number of pricing points.

Q. And you make your own choices on that, do you?

A. Do you mean editorial me or personal me?

Q. I mean editorial. I am talking about your organizations.

A. The organizations set up these twenty cities, and they keep a consistent series on the twenty cities. Those cities are not varied. The record is kept continuous for the same cities.

6953 *Cross-Examination by Mr. Leisure.*

Mr. Leisure: May I have that magazine?

Mr. Wooden: Yes. (Handing magazine to Mr. Leisure.)

Q. Miss Eaves, you gave Mr. Wooden a group of other things, other basic material that you publish prices upon. Do you gather that information in the same way, by sending out forms to get prices?

A. Part of them.

Q. How do you gather the labor prices, for instances?

A. That varies. We gather for cities outside of New York, we gather it through our representatives, and in New
6954 York we get it through our office and the Building Trades Employers Association, and from contractors associations, and occasionally we spot check those.

Q. You have an organization set up for the express purposes of gathering this kind of material and these prices, over the country?

A. That is right.

Q. In order that you may publish them; is that correct?

A. That is correct.

6965 R. J. MAHON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am employed by the Lone Star Cement Corporation and have been general traffic manager since December 1, 1934.

Q. Did you receive a subpoena calling for the production here of certain papers described in that subpoena?

A. I did.

Q. Have you produced anything in response to the subpoena?

A. I cannot answer that definitely. I have some papers here.

Q. Did you bring them in response to the sub-
6966 poena as you understood its terms?

A. I did.

Q. Are they from the files of the Lone Star Company?

A. They are.

Q. Will you produce them at this time?

A. (Witness produces papers.)

Mr. Wooden: Your Honor, I would like to have these papers marked for identification in the same way that we handled other papers brought in under subpoenas.

Examiner Norwood: Yes. Mark them 1137-A and so on.

Mr. Wooden: You do not need to mark the folder in which they appear.

Examiner Norwood: Are they attached?

Mr. Wooden: They are in a jacket, which I take to be the original folder or file. Is that right?

The Witness: Yes.

Examiner Norwood: I think they might as well be marked 1137-A and continue the lettering.

(The papers referred to are marked for identification respectively 1137-A to 1137-EEE.)

6967 Mr. Wooden: The papers which the witness has produced have been marked for identification 1137-A to EEE inclusive. I am offering them to your Honor (handing papers to the Examiner.)

Examiner Norwood: Yes.

Mr. Wooden: With the request that they remain in your custody until counsel for the Commission has an opportunity to examine them and determine which of them they desire to offer, if any, and we will make that decision by tomorrow morning.

Mr. Leisure: Now, your Honor, that brings up the precise point as to procedure to which I have objected heretofore.

Examiner Norwood: Yes.

Mr. Leisure: I know of no procedure whereby a subpoena duces tecum may be used as a dragnet or as a fishing expedition which will allow counsel to subpoena a large group of material and sit down and take his time and go over it and decide whether he wants to offer all or any of it in evidence. I know of no such procedure and I want to object to that procedure being followed at this time.

Examiner Norwood: Don't you think that counsel should have an opportunity to look at it before offering it in evidence?

6968 Mr. Leisure: I think the documents must be passed upon by your Honor as to relevancy and if your Honor finds that they are relevant material, then counsel can look at them and they can be offered, and that is the procedure that I understand to be the correct procedure. As for counsel sitting down and looking over them and determining which ones he wants to offer and which ones he will not offer, I think that is an abuse of the power of subpoena duces tecum, using it as a fishing expedition which I think is and should be prohibited by the Courts.

Examiner Norwood: I think in the case we have had heretofore, on account of the large number of documents, we have handled it in the only way that the situation would avail—in the only way the papers could be handled, and they have been open to counsel for both sides. Now, in regard to these, there are not so many of them. I

shall look over them and pass on their relevancy, as counsel has suggested, and then they are open to the inspection of either party and I shall submit them to—or permit counsel to the Commission to examine them first. Is that satisfactory?

Mr. Leisure: Do I understand from that, your
6969 Honor, that you propose letting Mr. Wooden go through the entire file and determine which ones he wants to offer?

Examiner Norwood: Yes, sir.

Mr. Leisure: That is the procedure I want to object to.

Examiner Norwood: The objection is overruled.

Mr. Leisure: (Continuing.) And without taking the time, your Honor, to unduly burden the record, I want to make the same objection as I have heretofore made in detail, under the Fourth and Fifth Amendments, as to that procedure.

Examiner Norwood: Yes, sir.

Mr. Leisure: Will that be accepted as I have stated it here again without taking up time unnecessarily?

Examiner Norwood: I think so, yes.

Mr. Leisure: Thank you.

Mr. Wooden: Your Honor, it is impossible for us, of course, to make any use of papers at all without determining whether they are in response to the subpoena, or whether they are relevant and material to the issues in the case. I don't see how it is possible for any offer to be made without going through that procedure.

6970 Examiner Norwood: Counsel has the privilege of examining and introducing or offering any that he wishes to be in evidence, and the remainder will be returned to the witness.

Mr. Leisure: The procedure suggested by Mr. Wooden is the precise procedure to which I wish to emphatically object.

Examiner Norwood: Yes—

Mr. Leisure: And based upon that I wish to ask now that we have all of the papers returned to us which the witness produced this morning—I would like to demand that they be returned to us now.

Examiner Norwood: They will not be returned.

Mr. Leisure: May I have my objection—

Examiner Norwood: You may withdraw the proffer at your own risk.

Mr. Leisure: I am not making any proffer. May I have a ruling on that objection?

Examiner Norwood: Your witness may refuse to produce them, if he wishes.

Mr. Zimmerman: He has produced them.

Mr. Leisure: He has produced them.

Examiner Norwood: What is the state of the record?

Mr. Wooden: As I understand it, your ruling is
6971 that the papers will be returned to the witness—such of them as are not offered in evidence?

Examiner Norwood: Yes.

Mr. Wooden: And that will be done promptly?

Examiner Norwood: Yes. Oh, yes.

Mr. Wooden: By tomorrow.

Examiner Norwood: I shall look over them and let you inspect them, in my presence.

Mr. Leisure: We have our objection noted.

Examiner Norwood: Yes.

6972 Q. Mr. Mahon, have you furnished from your company the information to the Engineering News Record as to base prices in effect at your various mill points?

A. No, sir.

Q. When we say "you", we mean you individually.

A. Right.

Q. Among the papers which you have produced
6973 under subpoena, were there any consisting of communications to or from the Engineering News Record?

A. There were.

6974 Q. Did any of the papers you produced under subpoena consist of communications between you and C. H. Reiter of Bethlehem, Pennsylvania?

A. No.

Q. You have no such communications in your file?

A. No.

6975 Q. Are you a party, Mr. Mahon, to any of the documents that you have produced under subpoena?

A. No.

Q. Or did you write them or receive them yourself?

A. No.

Q. Did you select the papers from your files that you brought in this morning, or how was that handled?

A. I selected them.

Q. From the Lone Star files?
A. Yes.
Q. And in response to the subpoena?
A. Yes.

6976 By Mr. MacIntyre:

Q. Mr. Mahon, I am showing you a document which has been marked for identification and offered as Commission's Exhibit 749-N, and ask you to state whether you recognize or can identify it as a letter which you received from Mr. E. S. Gubernator, of the Lehigh Company, as the file copy of the one which you so received?

A. I recall that.

Q. You do recall having received that letter?

A. I recall the nature of it. I do not recall actually receiving the letter.

Q. Do you recall having received such a letter, that is, including the contents?

A. I do not recall actually receiving it, but the contents of it strike a responsive chord.

Q. Do you recognize it as the contents of a letter that you did receive?

A. I couldn't say positively that I received it. I recognize the contents.

Q. As the contents of a letter that you did receive?

6977 A. No, I cannot.

Mr. Leisure: Do I understand that these are exhibits which were heretofore offered under a subpoena? I noted that Mr. MacIntyre said "an exhibit heretofore offered." Is this part of the subpoena?

Examiner Norwood: That is in the mass.

Mr. MacIntyre: The pending offer in the exhibit that came under subpoenas.

Mr. MacIntyre: We ask for acceptance of the offer on 749-N at this time.

Mr. Leisure: We make all the objection that we

6978 have heretofore made on the offer of this material, your Honor.

Examiner Norwood: Yes.

Mr. Zimmerman: Are you making a specific offer now?

Mr. MacIntyre: There has already been a specific offer made, and it is renewed at this time.

(COM. EX. 749-N was offered and received in evidence.)

6979 Q. I now show you documents which have been marked for identification as Commission's Exhibits 1023-A and 1023-B, and ask you if you can recognize or identify that as a copy of a letter which was sent to you by Mr. Hawkins, chief freight traffic officer of the Florida East Coast Railway, under date of August 17, 1935.

A. I recall that letter. Yes.

6980 Mr. MacIntyre: We offer that letter in evidence.

Mr. Leisure: Are you offering that now separately?

Mr. MacIntyre: I am offering that at this time.

Mr. Leisure: Your Honor, I have the previous objections as to this subpoenaed material.

Examiner Norwood: Yes.

Mr. Leisure: Which I take it will not be necessary to repeat this time.

Examiner Norwood: No.

Mr. Leisure: I have the additional objection to this exhibit that the activities described in the letter are not within any of the issues of the complaint.

And I further object to it as containing hearsay evidence. For example, "We were informed that the trouble started by Tampa selling" and so forth.

I make those additional objections to the objections we have heretofore made to the subpoenaed material.

6981 Mr. MacIntyre: I will ask Mr. Mahon if he did not, at the time this letter was written, serve as a member of a committee of freight traffic managers of cement manufacturers, for the purpose of securing favorable action from railroads with respect to reduction

6982 of certain railroad rates in port cities?

The Witness: No.

By Mr. MacIntyre:

Q. You did not serve on any committee?

A. No.

Q. Did you collaborate with other freight traffic managers of other cement manufacturers concerning such an objective at that time?

A. No.

6986 Examiner Norwood: About this, does the witness identify this handwriting on the second page of this letter?

Mr. MacIntyre: Do you mean the signature?

Examiner Norwood: The handwriting below it.

Mr. MacIntyre: No. He has not been asked about that.

Examiner Norwood: Is that objected to, that handwriting?

Mr. Leisure: I did not object to it, because I understood, your Honor, that when handwriting was not identified, it did not go in.

Examiner Norwood: That is true.

(COM. EX. 1023-A and 1023-B was offered and received in evidence.)

By Mr. MacIntyre:

Q. I show you document marked for identification as Commission's Exhibit 527, and ask you to state if you recognize or identify that?

A. Yes, I do.

Q. I now show you documents marked for identification as Commission's Exhibits 516-A, B, C, D and 514-C,
6987 D, E and F; and ask you to state if you can recognize or identify those as any that you have seen as having any connection with the letter that you have just identified?

A. Yes, I recognize this.

Q. Which is that?

A. That is 516-A.

Q. You recognize it as relating to 527?

The Witness: I recall it, but I cannot say that they relate to each other.

By Mr. MacIntyre:

Q. But you recall it as a document that was discussed in connection with the activities discussed in 527?

A. I cannot recognize it in that respect at all. I recognize it as having seen it and read its contents.

6988 By Mr. MacIntyre:

Q. Do you recognize these?

A. I recognize having seen that, also.

Q. That is, you are speaking now of 514-C and D, E, F, are you?

A. I recognize having seen it.

Q. And having read it?

A. I have read it, yes.

Q. I now show you documents marked for identification as Commission's Exhibits 1023-G and H, and ask you to state if you recognize or identify those?

A. Yes, I can identify them.

Q. As a letter and an enclosure that you sent with the letter to whom and when?

A. To Frank Van Ummerson on March 5th, 1936—1023-G and H.

Q. And 1923-H being a map which you enclosed with the letter?

A. Yes.

Q. And you sent carbon copies of the exhibits to the parties named at the bottom of 1023-G?

A. That is right.

Q. Those being Mr. C. N. Apgar, F. E. Guy, L. W. Carrier, R. V. Ceanoss, C. R. MacCarey and D. S. Browder.

A. Yes.

Q. I now show you a document which has been
6989 marked for identification as Commission's Exhibit 1023-I and ask you to state if you recognize or identify that?

A. Yes, I recognize that.

Q. I now show you documents which have been identified as 1023-J and 1023-K and ask you to state if you recognize or identify those?

A. I can recognize them.

Mr. MacIntyre: If your Honor please, we now offer the exhibits which have just been shown to the witness as documents which were produced under subpoena duces tecum.

Examiner Norwood: The proffer includes none that have not been identified by this witness? Is that right?

Mr. MacIntyre: All of these the witness has identified or recognized as his own letters.

Mr. Leisure: Without repeating the objections made at the time, we make the same objection as heretofore made.

Examiner Norwood: Yes.

Mr. Leisure: That is, as to the subpoenaed material.

Examiner Norwood: Yes.

Mr. Leisure: This comes under subpoenaed material.

It is objected to as incompetent, irrelevant, and im-
6990 material and not within the issues in the case.

6994 (COM. EX. 514-C, D, E and F, 516-A, B, C and D and 527 were offered and received in evidence.)

6996 Q. Mr. Mahon, can you say whether or not the information furnished by the Lone Star Company of its mill prices to the Engineering News Record has been

furnished over the name of or in the name of Mr. Koch, your vice president?

A. Mr. Koch authorized me to bring that file, in answer to the subpoena that was served upon me.

Examiner Norwood: Does that answer the question?

Mr. Wooden: No.

The Witness: I can state that the information as transmitted to the Engineering News Record is done either
6997 by or under the supervision of Mr. Koch.

Mr. Wooden: Thank you.

6998 Mr. Wooden: Your Honor, referring to these exhibits marked 1138-A to 1138-EEE, inclusive, it was my understanding that it was your Honor's conclusion that at present, after being examined by you, that you considered them relevant.

Examiner Norwood: Yes.

Mr. Wooden: On that understanding I will say that the papers have been examined and I do not care to offer any of them for the record, and I will return them at this time to the witness.

6999 D. S. BROWDER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

7000 *Direct Examination by Mr. Wooden.*

I am traffic manager of the Pennsylvania Dixie Cement Corporation and have held that position a little over 7 years, since February 1931.

Q. Did you receive a subpoena calling for the production of various papers here today?

A. I did.

Q. Have you produced any papers in response thereto?

Mr. West: May I interpose there, your Honor. The subpoena which was served on Mr. Browder by registered mail yesterday was addressed to the offices of Pennsylvania Dixie Cement Corporation, Lincoln Building, 60 East 42nd Street, New York City, calling for his presence here today and calling for the production of certain books, papers and documents described.

I assume that those books, papers and documents described are intended to describe documents belonging to

the corporation. Mr. Browder is not the proper person to subpoena to produce such documents. He has not custody or control of the records of the corporation.

I point that out simply to indicate that the sub-
7001 poena is entirely defective in that respect. However, I do not propose to stand on what I consider to be an entirely proper and valid objection; but I will voluntarily tender to your Honor at this time various documents extracted from the records of the corporation, which we believe fall within the description of those in the subpoena. I will produce those now and tender them to your Honor for determination as to their relevancy, competency and materiality. They are very, very few. (Handing papers to the Examiner.)

Examiner Norwood: Thank you, Mr. West.

Mr. Wooden: Your Honor, might I suggest that these papers be given a number for identification and that the procedure be followed similar to that followed hitherto.

Examiner Norwood: Yes.

Mr. Wooden: Permitting counsel for the Commission to examine them after you have done so?

Examiner Norwood: We will follow the same procedure as is followed in the case of 1137-A to 1137-EEE.

Mr. West: I object, if by that you mean that you will not now pass on their relevancy and materiality.

Examiner Norwood: Yes, I shall pass on it first
7002 and then allow counsel to examine them.

Mr. Wooden: Your Honor, I would like to state for the record that counsel for the Commission in the proceeding are relying upon the statutory provisions of the organic act of the Commission, which confers upon representatives of the Commission the right of access to documentary evidence of any corporation being investigated or proceeded against, with the right to act, and this right of access, at all reasonable times. I submit that in the course of this proceeding, in the courtroom, is such a reasonable time.

7003 Examiner Norwood: I was basing my previous rulings partly on that and other law and decisions on the subject.

The papers appear to be relevant and material, and I shall mark them for identification as Commission's Exhibits 1138-A to 1138-Q, inclusive.

(The papers referred are thereupon marked for identification, respectively, 1138-A to 1138-Q.

7004 By Mr. Wooden:

Q. Mr. Browder, can you tell us who in your company provides the Engineering News Record with information as to mill prices?

A. I cannot.

Q. Have you served at some time on a committee with Mr. Gubernator?

A. Just what kind of a committee do you mean, Mr. Wooden?

Q. And kind of a committee relating to the cement business?

A. Yes, sir.

Q. What committees have you served on?

A. The transportation committee of the Portland Cement Association.

Q. Any others?

A. As far as I recall right now, that is all.

Q. Who else served on that committee?

7005 The Witness: I don't think I can give you all of the names, Mr. Wooden. The names were changed probably from year to year and there are about twenty members of the committee. As I recall at the present time, some of them on the committee are Mr. C. R. McCarey of the Hercules Company, Mr. C. N. Apgar of the Alpha Company, Mr. C. M. Tuttle, of the Marquette Company, Mr. G. W. Cole of the Medusa Company, and Mr. Gardenton of the Superior Company on the West Coast.

By Mr. Wooden:

7006 Q. Mr. Gubernator—was he on it?

A. Mr. Gubernator was on it. I thought you asked me about committees on which I served with Mr. Gubernator.

Q. Was Mr. Gubernator the chairman?

A. I am chairman at the present time.

Q. Was Mr. Gubernator the chairman at one time?

A. I believe he was; yes.

Q. Can you say whether he was chairman in 1931?

A. No, I could not say.

Q. Did Mr. Mahon serve on it?

A. Mr. Mahon—he was on the committee, yes, sir. I don't recall if he is on the committee at the present time or not. I believe he is, though.

Q. Mr. F. E. Guy—is he on it?

A. Mr. F. E. Guy is on the committee, yes, sir.

Q. Have you known on any committee, either in the Institute or in the Cement Association known as the Cement Rate Committee?

A. No, sir; I don't.

Mr. Wooden: I don't think I have any further questions, but we have some identification matters to take up with the witness.

Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Mr. Browder, I show you a document which has
7007 been marked for identification and offered as Commission's Exhibit 971-6-X, and ask you if you recognize or identify that?

A. Yes, I recall having received the original of this letter.

Q. You received the original of it?

A. Yes, sir.

Mr. Leisure: May I ask your Honor if this is also an exhibit that came into the hands of the Federal Trade Commission by virtue of the subpoena duces tecum?

Mr. MacIntyre: That is correct, Mr. Leisure.

Mr. Leisure: And the others that you are about to ask about?

Mr. MacIntyre: And all the others that I am about to ask about, until I indicate otherwise, will be in that same category.

By Mr. MacIntyre:

Q. Mr. Browder, I now show you documents which have been marked for identification and offered as Commission's Exhibits 971-29-E and 29-F and ask you to state whether you recognize or identify those?

A. This second page which is 29-F appears to be the second page of a letter which I wrote to somebody. That is my signature. This first sheet—I have never seen it
before in my life. I don't know who this letter was
7008 to. I can't tell you. That is the second page of a letter. The first page is missing.

Mr. MacIntyre: I would like to state for the record, your Honor, that Mr. Leisure submitted these two documents, as documents that were together, among the Clark-Burns material under subpoena duces tecum on March 8th, 1938,

one being 971-29-E and the next being 971-29-F. As to whether there were other pages to it or not, the reporter evidently, as Mr. Leisure turned them in, did not find them.

7009 Mr. Leisure: I object to the statement, "Mr. Leisure submitted them as being together." Mr. Leisure did no such thing. If somebody clipped them together, they did it without my knowledge and I can state very clearly for the record that I had no intention to submit them as being together, because I had no knowledge on the subject and have no knowledge on the subject now.

Mr. MacIntyre: The reporter, it is obvious from the marking, found and marked 29-E and 29-F together, in Exhibit 971, that is all we know, of course, in the evidence that was submitted by Mr. Leisure.

Mr. Leisure: The reporter may have so found them, your Honor, but Mr. Leisure did not submit them as being together.

7010 By Mr. MacIntyre:

The witness identified Com. Ex. 971 23 T as a letter he wrote to Dr. Arthur R. Burns; Com Ex. 971
7011 23W as a letter, the original of which he received from
7012 Dr. Arthur R. Burns; Com. Ex. 971 24R as a letter he worte to Dr. Arthur R. Burns; Com. Ex. 971 25U as a letter he wrote to Dr. Arthur R. Burns in which were enclosed Com Exs. 971 25V, 25X, 25Y, 26A, 26B, 26C, 26D, 26E, and 26F; "The other exhibits" (Com. Exs. 971 25W, 26H, 26i, 26J, 26K and 26L) as statements he prepared and sent to Dr. Burns at some other time and not with "this" letter. He transmitted all of those to Dr. Burns; Com. Ex. 971 27A as a letter he wrote to Dr. Arthur R. Burns dated December 12, 1936; Com. Ex. 971 27B as a copy of letter that Dr. Burns wrote to him dated December 17, 1936; Com. Ex. 971 27C as the second page of the letter. The witness, in reply to the question whether he can recognize or identify the document marked as Com. Ex. 958 5-o as a letter to which he was a party or of which a copy was sent to him, said "This letter is Mr. Blaine S. Smith's signature." Apparently a copy was addressed to witness, but he does not recall having ever seen it. He recognizes Mr. Smith's signature. He identifies "that", but he does not recall having seen that letter.

7013 Q. But you do recognize the signature on it as that of Mr. Smith?

7014 A. Yes.

Q. Who at that time was your superior?

A. Not at the time that letter was written, no.

Q. He previously had been your superior?

A. He previously had been my superior.

Q. As president of the Pennsylvania Dixie Cement Corporation?

A. That is correct.

The witness identified Com. Ex. 971 28Y as a letter he wrote to Dr. Arthur R. Burns, dated October 15, in reply to one of the other letters he had just had from Dr. Burns; Com. Ex. 971 29A as a letter, the original of which he received from Dr. Burns in reply to Com. Ex. 971 28Y; Com. Ex. 971 29 B as a letter he wrote to Dr. Arthur

7015 R. Burns dated May 15, 1937. The witness, in reply to the question whether he can recognize or identify the document marked as Com. Ex. 913 1A, said "This is not Mr. Blaine Smith's signature on this letter". It appears that witness received a copy, and he recalls receiving the letter in question.

By Mr. MacIntyre:

Q. I now show you document marked for identification and offered as Commission's Exhibit 913-2-N, and ask you to state if you can recognize or identify that.

Examiner Norwood: Do you mean 913-2-N?

Mr. MacIntyre: That is right: 913-2-N.

A. Again, this is not Mr. Blaine Smith's signature. I did attend a meeting of the Marketing Research Committee in the Cloud Club. Whether this is the particular one I had in mind, I don't know.

Q. At that time?

A. Approximately at that time.

Q. That is, August 13, 1937?

A. That is correct.

7016 Q. Does it appear from the face of that document that you received a copy of it?

A. That is correct.

Q. Do you recall having seen a copy of it, concerning a notice of that meeting?

A. I do not recall this particular one, whether this is the one I received. I did receive a letter and attended a

meeting of the Marketing Research Committee in the Cloud Club. I think it is, that that is the letter, but I cannot say for sure.

Q. About that date?

A. About that date; last Summer, some time.

The witness identified Com. Ex. 971 4C as a letter he wrote to Dr. Arthur R. Burns, dated March 6, 1935; Com. Ex. 962 3R as a letter he wrote to Mr. John Kramer dated March 20, 1935, in connection with the activities of
7017 the Marketing Research Committee. The witness does not recall having received this particular letter marked as Com. Ex. 971 4 o, but he does remember giving Dr. Burns the information requested in this letter, that is, giving Dr. Burns the information which this letter purports to request, as of that date. The witness remembers giving Dr. Burns that information, but he does not remember that particular letter; Com. Ex. 971 4V, 4W and 4X as a letter he wrote to Dr. Arthur R. Burns, dated March 23, 1935. The witness does not know anything about all of these pen and ink notations "on here, the parts that are spread out and so forth". He did not do that. They were all in the letter that witness wrote. The deletions were not made when he sent the letter. There was none of these marks on this letter when he sent it. They are not in witness' handwriting. The witness knows Dr. Burns' signature, but he does not know his hand-
7018 writing well enough to identify the marks on this letter. The witness cannot say whether it is Dr. Burns' or Miss Rittenhouse's handwriting; Com. Ex. 971 5A as a letter he wrote to Dr. Arthur R. Burns, dated March 28, 1935; Com. Ex. 971 5C as a letter he wrote to Dr. Arthur R. Burns, dated March 29, 1935; Com. Exs. 562 3Q, 3S, 3T, 3U and 3V as a letter, dated April 4, that he received from Mr. Leonard, the Sales Manager of Riverside, enclosing "three maps" showing the price
7019 situation around the Los Angeles District, California. These appear to be the same maps, about which the witness testified. It is a long time since Mr. Leonard sent them, but the witness is quite sure these are the same maps. They appear to be; Com. Ex. 883 1Y as a copy of letter, dated January 5, 1937, he wrote to the traffic managers of other cement companies having allocations of cement on the Chickamauga Dam. Letters were addressed jointly to Mr. C. "M" Apgar of Alpha,

Mr. E. S. Gubernator of Lehigh, Mr. F. E. Guy of Universal Atlas, Mr. J. B. Johnson of Cowham Engineering Company and Mr. R. J. Mahon of Lone Star; Com. Ex. 883 1Z as a letter addressed to him, dated December 30, 1936 by Mr. J. B. Johnson of Cowham Engineering Company. The witness recognizes "it" as such; Com. Ex. 883 2A as a letter addressed to him, dated December 11, 1936, by E. S. Gubernator of Lehigh. The witness recognizes "it" as such; Com. Ex. 883 2B as a letter addressed to him, dated December 3, 1936, by Mr. J. B. Johnson of Signal Mountain. The witness recognizes "it" as such; Com. Ex. 883 2C as a letter addressed to him, dated December 2, 1936, by Frank E. Guy of Universal Atlas. The witness recognizes "it" as such; Com. Ex. 883 2D as a letter addressed to him, dated November 30, 1936, by Mr. C. N. Apgar of Alpha. The witness recognizes "it" as such; Com. Ex. 883 2E as a letter addressed to him, dated November 27, by Mr. R. J. Mahon of Lone Star. The witness recognizes "it" as such; Com. Exs. 883 1V, 883 1Q, 883 1R, 883 1J, 883 1K, 883 1S, 883 1T, 883 1L, 883 1M, 883 1N, and 883 1o as letters being "what they purport to be—to and from me, as indicated on them". He recognizes "those" as letters to which he was a party. The witness cannot say whether the document marked as Com. Ex. 751 B and C is the original or a copy of a memorandum he wrote on September 25, 1933, to Mr. Blaine S. Smith, President of witness' company at that time. The witness generally signed memoranda of this kind when he wrote them. He notices this one is not signed, therefore he does not know whether this is a copy or the original. The witness remembers writing this memorandum. He does not know whether it is an original or a copy; Com. Ex. 584 G as a letter he wrote, dated December 18, 1935, to 13 representatives of cement companies including Mr. R. E. Nicholson of National, and to the others whose names are shown on the face of the letter.

Examination by Mr. Zimmerman.

The list of addressees at the top of Com. Ex. 883 "Y" was selected because these parties represent the cement companies who "had been made awards" on the Chickamauga Dam of the Tennessee Valley Authority.

7029 By Mr. MacIntyre.

7030 Q. Mr. Browder, shippers who received awards on the Chichamauga Dam project made shipments in carloads varying from 225 barrels per car, did they not?

A. That is correct. The cars were loaded with the bulk cement, and then weighed on railroad track scales.

Q. They were permitted to make shipments in the minimum cars as low as 132 barrels on that project, were they not?

A. It would be permitted under the railroad tariff, but I do not think any minimum cars were made. Cars were all loaded to maximum capacity.

Q. Now light, to your knowledge, were any of the cars involved in shipments on that project? That is, as to the number of barrels included in the cars?

A. (No answer.)

Q. Were they as little as 200 barrels?

A. Some of the shipments as I recall—I checked back over the shipments that we made—some of the shipments as I recall were slightly over 200 barrels, and then they ran up as high as 240 barrels. I believe 247 barrels was as high as I recall. They were in that range somewhere, not greatly different from that.

Q. According to your knowledge, shipments were made in cars ranging from 200 barrels to 247 barrels?

A. About that, yes.

Examiner Norwood: I will take these exhibits 7031 under consideration.

Mr. MacIntyre: We now are to discuss a few exhibits that were submitted by respondents under subpoena duces tecum during February and March of 1938, and which have not as yet been offered, although they were marked for identification as Commission's exhibits.

The witness identified Com. Ex. 1027 D as apparently a copy of a letter addressed to him. He does not recall having seen it. He probably did, but he really does not recall having seen this letter. He does not recall having seen this letter. He may have—but this particular letter 7032 he does not recall. He does not say that he did not receive it, he just says that he does not recall that particular letter. It purports to be on its a face a letter addressed to him by Mr. F. E. Guy of Universal Atlas. The letter speaks of Mr. Guy's mill in Leedsville, Ala-

bama, which would indicate it was Universal Atlas; Com. Ex. 868 7Q as purporting to be a copy of a letter from Mr. E. S. Gubernator, General Traffic Manager of Lehigh, dated February 13, addressed to Mr. D. T. Lawrence, Chairman of Traffic Committee of the Traffic Men's Association, New York City, copies of which went to several cement representatives including the witness. The witness has a hazy recollection of having seen that letter before, "but to state that I have—that it is in my files—I just cannot do that"; but he does recall something
7033 about that letter; Com. Ex. 503 as a letter addressed to him by Mr. Frank E. Guy, Traffic Manager, Universal Atlas; Com. Ex. 502 as his reply to Mr. Guy,
7034 dated May 1; Com. Ex. 1023 N as a letter addressed to him, dated October 29, 1936 by Mr. F. E. Guy of Universal Atlas; Com. Ex. 1023 O as purporting to be a letter addressed to Mr. E. R. Oliver and Mr. W. McN. Knapp of the Southern Railway and of the Central of Georgia Railway respectively. He cannot positively
7035 identify this letter marked as Com. Ex. 1023 O. "The first one" he identified as a letter to himself. "But this one" he cannot say that he ever saw it before; Com. Ex. 868 3Y as a copy of a letter written by him on February 1, 1937 to Mr. E. S. Gubernator of Le-
7036 high. The witness recognizes "it" as such. He does not know whether it is a photostat of the original or a photostat of one of the copies.

Q. It is a photostat of the signed—

A. That is correct.

Q. —if it is not a photostat of the original—is it not?

A. That is correct."

7036 Q. I now show you a document marked for identification and offered as Commission's Exhibit 1027-E and ask you to state what you know about that?

A. This is a copy of a letter written by me to five representatives of cement companies, to which awards were made on the Chickamauga Dam on March 31.

May I suggest that I had a copy of this letter just now and identified it?

Q. I did not understand that.

A. I thought I had already had a copy of this and identified it.

Mr. MacIntyre: There was no offer made on this as

yet, and if it is identified as a copy of another one that has been identified by this witness, there will be no
7037 offer made on this one.

By Mr. MacIntyre:

Q. But you do recognize it as a letter you wrote to the five people whose names appear thereon?

A. Yes.

Mr. Wooden: Your Honor—

Examiner Norwood: Have you made your offer of these last ones from—

Mr. MacIntyre: We offer all of the documents that the witness has been asked about, whether he recognizes and identifies them, except 1027-E, and we will decide tomorrow morning whether there will be an offer on that or not.

Examiner Norwood: 1027-D—he did not identiy that.

Mr. Zimmerman: 1027-D.

Examiner Norwood: That is right. He did not, and also 1023-O.

Mr. MacIntyre: The others, we do offer at this time.

7038 Mr. Wooden: May I just return to just one thing?

I should like to offer at this time Exhibits 1138-A, N, O and Q from among the papers produced by the witness, under subpoena today, and I will state at the same time that I do not care to offer 1138-B to M inclusive, and 1138-P, which I return at this time to the witness (handing papers to witness).

I should like to have such supplemental identification as the witness can give to the ones which I do offer, A, N, O and Q.

Examiner Norwood: 1138-A to Q?

Mr. Wooden: 1138-A, then N, O and Q.

Examiner Norwood: All you offer is 1138-A, N, O and Q?

Mr. Wooden: Yes.

Mr. Leisure: As to the exhibits produced by the witness today under subpoena duces tecum, I haven't seen any of those exhibits, and I would like to have the privilege of looking at them.

Examiner Norwood: Yes. Let us see what the witness has to say about them.

By Mr. Wooden:

Q. Can you tell us what those papers are?

7039 A. 1138-A is a letter dated August 13th, 1936, addressed to Mr. C. H. Reigart, Cement Institute Rate Bureau, Bethlehem, Pennsylvania, by Mr. C. N. Apgar, copy of which was sent to me, and this is the copy which I received.

Examiner Norwood: Yes.

The Witness: Letter dated December 17th, addressed to Mr. C. H. Reigart, from Mr. J. L. Griffith our traffic manaber in Chattanooga, Tennessee. That is N.

1138-O is a letter addressed by me under date of April 24th, to Mr. C. H. Reigart.

1138-Q is a letter addressed by me under date of August 18th, to C. H. Reigart.

Mr. Wooden: Your Honor, I believe there are just four, and they are very short, and it seems to me that counsel can look at them now.

Mr. Zimmerman: I haven't any intention of studying them now.

7041 Mr. Zimmerman: There are one or two questions I should like to ask this witness in relation to 1138-A.

By Mr. Zimmerman:

Q. Have you got that exhibit where you can put your fingers on it?

A. Yes.

Q. Now, I have reference to the rate—this says here, "In line with our conversation, we have worked up the enclosed list of rates from Richard City and Birmingham to West Virginia points."

A. Yes.

Q. Where did you get the information upon which you based that material you worked up?

7042 A. This was worked up by Mr. Apgar and sent to me. I didn't work it up.

Q. Where did it come from, if you know?

Mr. Zimmerman: I suppose I can ask Mr. Apgar about that.

Mr. Wooden: Your Honor, I submit that we did not go into the contents of the papers.

Mr. Zimmerman: That wouldn't make any difference, would it? You wouldn't contend that we could not cross examine on anything you offer in evidence merely because you did not go into the contents, would you?

Examiner Norwood: You can't cross examine until it is received in evidence.

Mr. Zimmerman: Sir?

Examiner Norwood: You can't cross examine until it is received in evidence.

Mr. Zimmerman: Why? It is customary as a matter of determining whether or not these things are relevant or material to any issue. This does not go to the weight of it.

Examiner Norwood: All right. You can ask questions relating to it.

Mr. Zimmerman: However, I prefer not to annoy counsel, if he would rather that I did not examine this witness about it—I will wait until Mr. Apgar
7043 comes along.

Examiner Norwood: You shouldn't go into the contents, unless it has been received. Neither side shall do that.

Examiner Norwood: We will defer the ruling on 1138-A, N, O and Q until tomorrow.

Mr. Leisure: May the witness be excused, your Honor?

Examiner Norwood: You have no further questions of this witness?

Mr. Zimmerman: No.

Mr. MacIntyre: If your Honor please. I will make this suggestion for the record. If the ruling is not going to be made on these four documents until tomorrow, and if it is insisted by Mr. Zimmerman that he desires to cross examine the witness after they are received in evidence, then it would appear that it would be necessary, if that is to occur, that the witness come back for cross examination.

Mr. Zimmerman: Well, I will waive it. If you want to get through with the witness tonight, I will waive it.

7045 C. N. APGAR, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden:

I am traffic manager of the Alpha Portland Cement Company and have held that position since November 1, 1914.

Q. Did you receive a subpoena calling for the production of certain documents here?

A. Yes, sir.

Q. Have you produced any papers in response thereto?

A. I have a few papers here.

Q. Will you produce them?

A. (Witness produces papers.) Any others that might come under that have already been taken under the original subpoena.

Mr. Wooden: Your Honor, may I suggest that these papers be examined by you and given a number for identification, and then that counsel for the Commission be allowed to examine them.

Examiner Norwood: Yes. (The papers are examined by the Examiner.)

We will mark them Commission's Exhibits 1141 for 7046 identification, A, B, C and D.

(The documents referred to were marked "Commission's Exhibits 1141-A, 1141-B, 1141-C and 1141-D for identification.")

Examiner Norwood: Apparently they refer to the freight rate service from the Institute supplied to the witness' company.

(Discussion off the record.)

By Mr. Wooden:

Q. Have there been times, Mr. Apgar, when your company has not subscribed to the freight rate service of the Institute?

A. Not since they started the last time.

Q. You mean you have continuously subscribed since 1930, then?

A. Well, whenever that was started. I just don't recollect the exact time.

Mr. Leisure: Counsel says he does not know at this time whether he is going to offer them. I want to make all the objections I have heretofore made to the admission of these as exhibits.

Examiner Norwood: Yes.

Mr. Wooden: I will state that I do not care to offer any of them, your Honor.

Examiner Norwood: Do you return those to the 7047 witness?

Mr. Wooden: Yes, I return them to the witness.

(The papers referred to are returned by Mr. Wooden to the witness.)

Mr. Leisure: May we see them now, your Honor?

Examiner Norwood. At any time.

Mr. Leisure: It is all right if we just look them over tonight. We do not need to look them over in the court-room.

I do not want to ask the witness any question.

Examiner Norwood: I think the records show that these papers, marked 1141-A, 1141-B, 1141-C and 1141-D, are returned to the witness, and that counsel may see them.

Mr. Leisure: I can get them from the witness.

By Mr. Wooden:

Q. Have you had anything to do, Mr. Apgar, with supplying the mill price information to the Engineering News Record?

A. No, sir.

Q. Do you know who in your organization has?

A. I do not.

7048 Q. Mr. Apgar, have you served on a rate committee with Mr. Gubernator and other traffic managers?

A. I just don't know what you are driving at. Some specific committee, you mean?

Q. Yes, any specific committee.

A. Well, I don't know that you would call them committees. Interested people sometimes get correspondence that indicates there might be a committee when that is not always true. They are just interested people, interested in the subject. I don't know just what you mean.

Q. Have you served or worked with other traffic managers of other cement companies in connection with the preparation of rates for the Bethlehem Rate Bureau?

A. We have not, no.

Q. Have you exchanged communications with other traffic managers about freight rates to be used by the Bethlehem Freight Bureau?

A. I don't know that we have exchanged cor-
7049 respondence. We may have, but I do not know. Perhaps we have, of some general nature.

Q. Have you worked with other traffic managers of other cement companies, in connection with what headline points should be included in the freight books?

A. No, sir.

Q. Referring to Exhibit 1138-A for identification, is that your communication to Mr. Reigart?

A. It is from my office.

Q. Is it addressed to Mr. Reigart?
A. Yes.
Q. Did you send a copy to Mr. Browder?
A. Yes.
Q. Who is the other gentleman?
A. Mr. Clous, of the Lehigh Portland Cement Company.
Q. Is he a traffic manager?
A. No. I don't know whether he has a title of assistant traffic manager or chief clerk. He is a Lehigh Portland Cement Company man.
Q. Do you know who W.N.K. is?
A. Yes. That is my clerk.
Q. What is his name?
A. Kenecht.
Q. Have you had some communications with other traffic managers regarding rates to be published in the 7050 freight rate books of the Institute?
A. Well, I couldn't tell you, really. It may have been possible. I have not anything to show it.
Q. Do you have any recollection on the subject?
A. Not definite, no.
Q. You mentioned the Lehigh and the Penn-Dixie, I believe as parties you communicated with about such matters.
A. In this case?
Q. Yes. You have no others where you have ever done that, none other than that?
A. No, not definitely. There may be some cases. I haven't any definite idea in mind at this time.
Mr. Wooden: That is all.
Examiner Norwood: All right, Mr. Zimmerman. Cross examine.
Mr. Zimmerman: Mr. Examiner, didn't you once before suggest that we cross examine?
Examiner Norwood: Yes.
Mr. Zimmerman: I thought so. Half a question that I never finished provoked all these questions on redirect. I decline. I don't know when we may get through.
Examiner Norwood: There being no cross examination of the witness, he is discharged.